



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Protection Program**

### **Meeting Minutes**

**January 28, 2004**

# **MISSOURI CLEAN WATER COMMISSION MEETING**

**January 28, 2004**

**Governor Office Building  
200 Madison Street, Room 450  
Jefferson City, Missouri**

## **MINUTES**

### Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission  
Paul E. Hauser, Commissioner, Missouri Clean Water Commission  
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission  
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission

Mike Alesandrini, STL RCGA, French Village, Missouri  
Darrell Barber, Department of Natural Resources, Jefferson City, Missouri  
Steve Bauguess, Department of Natural Resources, Jefferson City, Missouri  
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri  
Robert J. Brundage, Mo-Ag, Jefferson City, Missouri  
Nancy Brunson, Duncan's Point Home Owners and Lot Owners Assoc., Inc.,  
Prairie Village, Kansas  
Bill Bryan, AGO, Jefferson City, Missouri  
Randy Clarkson, Bartlett & West, Jefferson City, Missouri  
Elizabeth Dietzmann, Public Water Supply District #3, Rolla, Missouri  
Cindy DiStefano, Department of Conservation, Columbia, Missouri  
Mohsen Dkhili, Department of Natural Resources, Jefferson City, Missouri  
Joe Engeln, Department of Natural Resources, Jefferson City, Missouri  
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri  
Jim Hull, Department of Natural Resources, Jefferson City, Missouri  
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri  
Jeff Grater-Jacobs, Jacobs Engineering, St. Louis, Missouri  
Duane Kelly, Independence, Missouri  
Malinda King, Department of Natural Resources, Jefferson City, Missouri  
Richard Laux, Department of Natural Resources, Jefferson City, Missouri  
John Lodderhose, St. Louis MSD, St. Louis, Missouri  
Jim Lunan, Holcim, Bloomsdale, Missouri  
John Madras, Department of Natural Resources, Jefferson City, Missouri  
Bruce Martin, Department of Natural Resources, Springfield, Missouri  
Jim Mellem, Water Services Kansas City MO, Kansas City, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Susan Myers, Urban Areas Coalition, St. Louis, Missouri  
Caitlyn Peel, HBA, St. Louis, Missouri  
Kevin Perry, RegForm, Jefferson City, Missouri

Roger Phillips, Phillips Engineering, Springfield, Missouri  
John Pozzo, Ameren, St. Louis, Missouri  
Peter Price, Department of Natural Resources, Rolla, Missouri  
Ted Salveter, City Utilities, Springfield, Missouri  
Candy Schilling, Department of Natural Resources, Jefferson City, Missouri  
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri  
David Shanks, Boeing, St. Louis, Missouri  
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri  
Buffy Skinner, MSD, St. Louis, Missouri  
Royan Teter, EPA, Kansas City, Kansas  
Steve Townley, EI ERA, Jefferson City, Missouri  
Larry VanGilder, Taney Co. Regional Sewer District, Branson, Missouri  
Bob Veenstrc, URS Corp, St. Louis, Missouri  
Scott Vogler, MECO Engineering  
Tom Wallace, Columbia, Missouri  
Mary West, Moberly, Missouri

### **Call to Order/Introductions**

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Greene, Kelly, Hauser and Easley. Commissioner Perry, and Commissioner Minton were absent. Chairman Herrmann explained that Commissioner Minton had a family illness and could not be present, and Commissioner Perry was out of state on business and could not be present. Chairman Herrmann then introduced Director of Staff Jim Hull, Acting Secretary Malinda King, and Assistant Attorney General Amy Randles.

### **Administrative Matters**

#### **Public Hearing on Proposed Rule 10 CSR 20.7.050 Methodology for Development of Impaired Waterbodies List**

All witnesses were sworn in by the court reporter to testify at a public hearing held on the Proposed Rule 10 CSR 20.7.050 Methodology for Development of Impaired Waterbodies List. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

#### **Adoption of December 11, 2003 Joint Clean Water Commission/Hazardous Waste Commission Meeting Minutes**

Chairman Herrmann asked if there were any corrections/additions or supplementation to the minutes, including the handouts. Hearing none Chairman Herrmann entertained a motion to accept the minutes and enter them into the record.

**Commissioner Hauser moved to adopt the December 11, 2003 Joint Clean Water Commission/Hazardous Waste Commission Meeting Minutes. Commissioner Easley seconded the motion. Commissioners Easley, Hauser and Chairman Herrmann voted yes. Commissioners Greene and Kelly abstained.**

**Adoption of December 11, 2003 Clean Water Commission Meeting Minutes**

Chairman Herrmann reported he had two items that he noticed on page 71 in the second paragraph. Documentation should be changed to argumentation, which changes the context considerably. On page 72, the second full paragraph, the word acceptance should be changed to exception, which again changes the whole context. Chairman Herrmann asked if there were any other corrections or additions. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into the record.

**Commissioner Hauser moved to adopt the December 11, 2003 Clean Water Commission Meeting Minutes with Chairman Herrmann's corrections. Commissioner Easley seconded the motion. Commissioners Easley, Hauser and Chairman Herrmann voted yes. Commissioners Greene and Kelly abstained.**

**Adoption of January 7, 2004 Clean Water Commission Teleconference Meeting Minutes**

Chairman Herrmann reported he had one minor change and that was on page 126. It says that Chairman Herrmann said on November 25, 2002, Commissioner Perry and he went with Bill Bryan to look at some innovative and alternative systems on hog farms. It should be noted that Commissioner Kelly was also a party to that trip. Chairman Herrmann asked if there were any other changes.

**Commissioner Greene moved to adopt the January 7, 2004 Clean Water Commission Teleconference Meeting Minutes with Chairman Herrmann's corrections. Commissioner Greene seconded the motion. Commissioners Easley, Kelly, Greene, and Chairman Herrmann voted yes. Commissioner Hauser abstained.**

**Water Quality Trading Presentation**

Peter Goode, Chief of the NPDES Permits and Engineering Section in the Water Protection Program, discussed Water Quality Trading. A presentation was requested by the Commission a couple meetings ago. Unfortunately due to time constraints at the last meeting, it had to be put off until now. Mr. Goode gave a general overview of Water Quality Trading. He reported the department had not had any Water Quality Trading

activity as such in Missouri, but there was some going on throughout the country. Approximately a year ago in January 2003, the US Environmental Protection Agency issued a revised policy on Water Quality Trading. EPA has had a policy for about a decade on Water Quality Trading. It was recently updated to try to get some momentum behind the idea. Water Quality Trading is an approach that offers greater efficiency in achieving Water Quality goals on a Watershed basis, and it allows one source to meet its regulatory obligations using pollutant reductions from another source that will lower pollution control costs. It is an attempt to balance out to meet your goals, it also provides an incentive for voluntary reductions. Typically there is a monetary type incentive. Mr. Goode gave a general example of a Water Quality Trading scenario with two sources, Source A and Source B. Source A can reduce a given pollutant in a Watershed for about \$7 per pound of pollutant removed and they don't have a mandated reduction. Maybe they are already in compliance with the permit limit but they can get below that permit limit for about \$7 a pound of pollutant removed. Source B on the other hand, in order to control the same pollutant, may have to spend \$28 per pound and source B may have to meet a new permit limit. So in general, Source A and Source B could work out an agreement where they could determine a price per pound of pollutant removed. Typically that would be somewhere between \$7 and \$28 per pound. So the benefit to Source A is they can possibly make a little money on their reductions and Source B gets to save a little money while meeting their permitting goal. Under EPA policy pretty much anyone can participate in trading. Point Sources can obviously participate. Nonpoint Sources are allowed under the policy, and possibly groups or entities that are outside that don't even have a discharge point, maybe an environmental group, or maybe some concerned citizens that want to help enhance the water quality in a Watershed. They may be able to buy or pay for some pollution credits and retire them for the Water Quality benefit. The types of trades that are allowed are obviously Point Source to Point Source Trades, Nonpoint Source and Point Source. It's conceivable that you could have a Watershed that is dominated by Nonpoint Sources where you may have some Nonpoint Source to Nonpoint Source Trading and again a third party could potentially come in and purchase some credits and retire them too. There are various different types of trading systems and they can operate in a variety of different ways. The simplest type of trading would be considered a two entity type of contract where one source is contracting with another. You could have multi-entity contracts where a couple of sources contract with another one for reductions. The centralized bank is something that is associated with an open market trading system that most people think of when they think of pollutant tradings. They think of a bank where people can quantify their reductions, put them in the bank, and somebody else can come to the bank and try to locate reductions that they need, and the centralized system helps bring the buyer and the sellers together. Another example of a system is a Trading Association and this is something that is occurring in a couple of Watersheds in the country where a group of Point Sources get together and they have to meet a certain load allocation. To do so they form an association and that association goes out and contracts with other Nonpoint Sources or possibly Point Sources, and as a group they contract with other entities to meet their allocation. EPA's policy allows trading to be implemented in Watersheds with EPA approved TMDLs and also where TMDLs have not yet been approved. EPA does not want to slow down the

process of getting trading started by just allowing it in waters where TMDLs have been established. EPA believes that in areas where TMDLs have not yet been implemented, trading is a viable option as long as there is good oversight.

Commissioner Greene asked if it must be trading within the same Watershed.

Peter Goode replied yes. The Water Quality benefits have to occur within the same Watershed so the trading has to occur within the same Watershed. You can't trade biocumulative chemicals of concern. Interpollutant Trading is not allowed. You can't trade Mercury for nutrients or things like that. Trades must be within the same Watershed in order to get the Water Quality benefit and not degrade certain waters. There is a condition called trading ratio. It's for Point Sources and Nonpoint Sources to account for some of the uncertainty and Nonpoint Source best management practices. How this works typically, a Point Source needs to get 10 pounds of pollutant reduced. They contract with or find a Nonpoint Source. Because of the uncertainty in measuring the benefits of the Nonpoint Source control, a lot of programs require an offset ratio where you have to buy twice as many as you need. So instead of going out and buying 10 pounds of credits, they would have to go out and buy 20 pounds of credits to account for that uncertainty. In some systems there is an environmental or Water Quality tax to ensure that the Water Quality goals are going to be met. Say an additional 10% of credits have to be purchased in order for a trade to occur. That is typically something that is imposed either locally or at the state level and that is optional. That is not something that has to occur but it has occurred in some trading programs in the country. The credits themselves are a unit of trade generally established in mass, per unit time typically, like pounds per year. The credits have a specific lifetime because controls can tend to degrade over time so you can't just buy credits and be set for the next 20 years. They may last a year, they may last 5 years, it depends on the specific situation. Verification is also very important. Obviously Point Sources have an easier time verifying and monitoring their discharges. For Nonpoint Source, there is some uncertainty as to the effectiveness and what level of effectiveness occurs from Nonpoint Source controls, so typically you need a third party to go out and certify that the best management practice was implemented and is being maintained. The benefits are somewhat obvious for Water Quality Trading, it lowers the overall cost of pollution control. Pollution may be reduced earlier. The program themselves can be tailored to a specific local condition, specific local water quality problems and address the actual sources within the Watershed and its just another tool in the toolbox. Mr. Goode stated that you might ask, well why haven't we done Water Quality Trading in Missouri or why is it more prevalent across the country? He explained there is a number of reasons for that. On the program's level just from budgetary standpoint resources, this is a new program which would require obviously more staff time and there isn't any more money available for implementing this. EPA doesn't give the department any more money for implementing Water Quality Trading so resources are an issue. Water Quality Trading is kind of a new and undefined program. There are some Water Quality Trading programs going on across the country but there is no standardized format for a Water Quality Trading program. They are all pretty unique and there just aren't that many out there that have been implemented where

you have a whole lot of trading going on. These programs can be developed on a local basis and really address specific Watershed needs and whatever unique conditions exist in the Watershed. It's not a one size fits all approach so that can be good and bad. Verification of credits, there needs to be someone to verify things like best management practices for Nonpoint Sources, and what's the value of a credit. That is one of the first questions that people always ask when talking about Water Quality Trading; what can I get for a pound of nutrients or a pound of phosphorus? Because there aren't a whole lot of examples of Water Quality Trading programs out there, it can't be said it's \$10 a pound or \$15 a pound so that is kind of an uncertainty too. How do we incorporate these things into permits? There isn't a system established yet so it can be done, but it's not something we are real familiar with at this point so we need to figure out how to incorporate trading into permit conditions. Mr. Goode asked what if it doesn't work? Again this is a new program. He asked how do we address potential failures, do we expand trading programs if initially they don't work or do we cut them off and shut them down? That again is something that can be addressed on a Watershed basis depending on each system that is set up. The next steps for us is probably forming a stakeholder group. There is a variety of interest that would want to participate in this, obviously Nonpoint Sources, Point Sources, and the various subcategories that fall within those. Develop some draft regulations and amendments to present to the commission then move on to final regulation and amendments, establish the program parameters and work with local interests and implement where they can in priority Watersheds. The key thing to think about in Water Quality Trading is that there is no one size fits all approach to this. In impaired waters we can tailor the program such that it involves just Point Sources, Nonpoint Sources, a combination thereof, or ones that want to participate and ones that don't. They can tailor this to fit the local needs. One thing that will make it successful is local interest. If the department comes into a Watershed and says they are going to implement Water Quality Trading in Missouri, or in a given Watershed, without local support or without developing local support first, they are going to develop a program that is not going to have any trading going on. So they need to have local interests that are interested in this. That way we can focus our resources and get some results where needed. Mr. Goode stated he would be happy to answer any questions.

Commissioner Greene had a few questions. She stated that Mr. Goode said there are just a few other models, but what states are doing this?

Peter Goode responded Idaho and North Carolina. North Carolina probably has a couple of the best examples of Water Quality Trading. The Trading Association that he spoke of, it's either the Tar-Pamlico or Neuse River Watershed. So there are a couple systems going on there. Colorado has a couple examples but they are just kind of one Point Source to another two entity contracts. West Virginia has some trading. There is trading in Long Island Sound, which is a multi-state endeavor too. So there are some examples of systems going on but its kind of spread out and there is no boiler plate trading system.

Commissioner Greene responded to Mr. Goode that he was talking about pounds of pollutant. Commissioner Greene asked if this is pounds over all, is this per time period or how is it measured.

Peter Goode replied it's typically in something along the lines of pounds per year. When you develop, it depends on the Watershed, but if you develop a load allocation that says your Point Source is in this Watershed, it can discharge a 1,000 pounds of nutrients during a given year and still maintain a Water Quality Standard, then that is the type of target you shoot for so you may have something like that.

Commissioner Greene asked what Watershed unit would you use because Watersheds can be big or little.

Peter Goode replied that it depends. It can be set up in either small segments, small impaired segments, or it can be an entire Watershed. One thing that is being looked at nationally is nutrient trading for the Mississippi River because of the Gulf Hypoxia problem, and obviously they could set up a trading system that involves the entire Mississippi Watershed. They wouldn't go with anything that large but you could kind of set it up in a smaller Watershed basis, Sub-Watershed depending on what the impairment is.

Commissioner Greene added that she thought it wouldn't be practical if your definition was too small because then you wouldn't have anybody to trade with.

Peter Goode replied that was correct, and some people in a Watershed that are maybe below the impaired segment of your Watershed, you wouldn't want them involved in trading because any Water Quality benefits that they might accrue would not benefit the impaired segment because they are downstream. It will just kind of depend on the given local conditions. Mr. Goode asked if there were any questions?

Commissioner Hauser stated he would like to encourage Mr. Goode to proceed with all haste. On the Air side, this same market based approach was tremendously successful and he thinks this offers tremendous promise too. Even in the area resources, he thinks long term it will be a money saver. With the success on the Air side, if the goal is to clean water, this has the potential to do it much more quickly and economically than current methods.

Peter Goode indicated the Federal Acid Rain Trading Program has been highly successful and he has had the opportunity to develop two Air Quality Trading Programs. One for Electric Utilities and the second a general trading program in non-attainment areas for air quality. Those are both being implemented right now, and they have had the backing of industry folks and it's generally seen as a money saving effort.



Commissioner Hauser added that it is good for the environment. He remembers at the time that many of the same concerns were raised about Air Pollution Trading but it has proved to be tremendously successful.

Peter Goode answered yes it has. Thank You.

Chairman Herrmann thanked Mr. Goode.

### **2004 Intended Use Plan Bypass Recommendation**

Doug Garrett reported each year as they get to the tail end of the Intended Use Plan (IUP) Fiscal Year they come before the Commission and request concurrence on bypassing those communities that are on the IUP. Those that have not proceeded in an expeditious manner to receive funding or had issues develop in the course of their project that have delayed their progress. It is that time again to ask for the Commission's concurrence on bypassing a number of communities. Each of these communities were notified by mail that the program would be recommending bypass. Included in the packets is a letter from Ashland, where they concur with their being bypassed. They have reapplied and the program intends to have them on the IUP next year. Taney County Regional Sewer District is progressing with their project, however, they are working with the City of Branson to effect a more beneficial project to the residents in their areas. They are progressing, however, they would not be in a position to receive a loan this spring. They too have reapplied and are expected to be on the IUP again next year and with all likelihood the program will be in a position to receive their funding in the fall. One other community, which is the City of New Bloomfield, they did not reapply so they will fall off the IUP completely. In previous conversations with the community and their consultant, the program knows that the community is proceeding with their project but they are seeking funding through the USDA Rural Development Program. Representatives from both Taney County Regional Sewer District and the City of Branson were present, if anyone had questions on their project; otherwise they were just seeking the Commission's concurrence at this time to bypass the communities that are listed.

Chairman Herrmann asked if there were any questions of Mr. Garrett. Thank you. There was a request to speak to the Commission from Larry VanGilder from the Taney County Regional Sewer District.

Larry VanGilder stated he appreciated the opportunity to come and just concur with the staff recommendation and they are proceeding forth with the Bee Creek plan just north of Branson to sewer that area. There are over 500 septic tanks in that area. It's a big project and its taking a lot of time to get the project put together in cooperation with the City of Branson and the Taney County Regional Sewer District. He appreciates the Commission's effort on this and they will proceed forward hopefully in the next fall arena to get the project going. Thank you.

Chairman Herrmann thanked Mr. VanGilder and asked if anyone else wished to make a comment or had questions of either the staff or anyone else. Hearing none, Chairman Herrmann entertained a motion to accept staff recommendation.

**Commissioner Greene moved to accept staff's 2004 IUP Bypass recommendation. Commissioner Hauser seconded the motion. All Commissioners and Chairman Herrmann voted yes.**

#### **2004 Intended Use Plan Funding Recommendation**

Doug Garrett stated he has been working with several communities over the past year as they have been progressing on their projects: The City of Moberly, Laclede County Public Water Supply District #3 and the City of Parkville. Although they appeared on the contingency list of the 2004 IUP, each of these communities have felt a need to proceed with their projects to provide adequate wastewater treatment facilities for the residents that they serve. In that regard, the City of Moberly has submitted documentation on the first phase of their project, and they have received staff approval of three contract documents to date. The fourth document is currently being reviewed by the project review engineer and they anticipate approval of that in the not too distant future. Likewise, Laclede County Public Water Supply District and the City of Parkville, both have submitted all necessary documentation. The last item needing to be approved by staff are the plans and specifications on their projects and likewise the program expects those to be approved here in the short term. They would like these communities to be moved to the fundable list in order that Moberly and Laclede County Public Water Supply District can participate in the April loan closing. The City of Parkville has yet to pass a bond issue. They anticipate that to be placed before the voters early this summer. They have been seeking other fundings from the Department of Economic Development, to be specific, and were planning to put their ballot issue before the voters based on whether they received some grant funding for their project. They have been advised by the Department of Economic Development how they would possibly fair for that grant funding and have indicated to staff that they will be proceeding with the ballot issue early this summer, in which case the program would intend to fund them as a carry over project in the next IUP in the fall. Mr. Garrett believes they do have representatives from both Moberly and Laclede County that may wish to make a comment.

Chairman Herrmann responded the Commission has just approved a bypass of \$28,459,300 and the total for these funded projects is \$19,402,300. Chairman Herrmann asked what happens to the rest of the funds.

Doug Garrett explained that those funds will be applied to projects that are going to be on the next IUP.

Chairman Herrmann asked if they will be carried over funds.

Doug Garrett answered yes and they are in the process of putting together the list of projects and how the funding is going to break out which they hope to present at a later Commission meeting.

Chairman Herrmann asked if there were any other questions of Mr. Garrett.

Elizabeth Dietzmann introduced herself as general counsel and the attorney for the Public Water Supply District #3 of Laclede County. She has been working with them since 1997 on this project. They have passed their bond election, and they have taken all the steps that they need to proceed. They are within about four or five households of completing their entire easement acquisition process. In addition, they have received their funding commitment from Rural Development who is about a 50% partner on the project. They looking at being ready to start construction this spring so they are very optimistic that the project is ready to move along. They have certainly worked a long time on it. Present today is the engineer for the project who has got all the plans and specs in. Ms. Dietzmann explained this is one of her pet projects. She has worked on it a long time and is happy to see that they are this close to actually completing it.

Chairman Herrmann stated there is a card from Roger Phillips, Phillips Engineering.

Roger Phillips reported he is the engineer for Laclede County Public Water Supply District #3. He thought they had the plans, and they had already been submitted last fall to DNR for review. They received the review comments back and are addressing those at this time. They anticipate getting the plans back to DNR shortly.

Chairman Herrmann stated there is also a request to speak from Mary West on behalf of the City of Moberly.

Mary West reported that the City of Moberly has requested \$15.1 million to be in the IUP. They currently have either completed or are ready to go to bid for about \$5 million worth of work. That \$5 million will be completed, they hope, by October of 2004. There is an additional \$10 million that will be completed in the next three years, that is other amount that they are asking for. The additional engineering costs for the study and phasing of the remaining projects is about \$1 million so they are looking at a \$6 million need right now. In November of 2002, the citizens of Moberly passed a bond issue for allowing them to participate in the SRF Program and at the same time they quadrupled their sewer rates. The community is very committed to these projects. They realize that they need to proceed. The reason they went ahead with the projects prior to funding from SRF was because they were under pressure from DNR, Enforcement, because several of their pump stations and other things were failing. They could not afford to wait until they were on the fundable list. They would appreciate being moved up now so they could refund those bonds and make their dollars stretch even further. Thank you.

Chairman Herrmann asked if there were any other questions. Hearing none, the Chairman entertained a motion to accept staff recommendation.

**Commissioner Hauser moved to accept staff's 2004 IUP Funding recommendation. Commissioner Greene seconded the motion. All Commissioners and Chairman Herrmann voted yes.**

### **Missouri Nonpoint Source Management Plan**

Becky Shannon, Water Protection Program, Chief of the Watershed Protection Section, apologized that Greg Anderson was not able to be there and stated she will be presenting the information. The information that is in the packet is simply a summary of information that was previously sent by mail. She confirmed that the Commission did receive the thick packet of revisions to the Nonpoint Source Management Plan.

The Missouri Nonpoint Source Management Plan is required by EPA under Section 319 of the Clean Water Act as a condition to receive 319 funding, which is the Nonpoint Source Grant Funds. The plan is revised fully every five years but each year some revisions are made to the plan. The Clean Water Commission approved a major revision of the plan in March of 2000. The most recent yearly revision was done in November of 2002. The plan itself includes the major goals and objectives for the states' Nonpoint Source Management Program. Each year various aspects of the plans are reevaluated and revisions made. At the end of the fifth year they expect to evaluate the plan fully and determine the success in meeting the goals. It won't be the end of the plan; they will revise it and then implement yearly revisions again after that.

The objectives for the revisions of this past year are listed in the packet. They address identifying federal lands and activities that are not managed consistently with the Nonpoint Source objectives, maintaining funding at or above 1999 levels for the Nonpoint Source activities, incorporating Nonpoint Source related goals of other groups and agencies into the Nonpoint Source Management Program, annual review of assessment and monitoring strategy and funding sources in the plan, which has been done each year. In year three, staff will review and update any remaining categorical sections such as land application of permitted waste. In the packet there are a number of categorical sections, agricultural, construction, urban Nonpoint Source, etc. In the revisions that were made this year, there are a number of changes that seem to be rather minor bureaucratic changes, but staff tries to make the plan as current as possible through yearly revisions.

The proposed revisions to the plan for year three were mailed to the Commission and they are summarized in the attachment in the document that was also sent. As in previous years, the proposed changes will necessitate changes to the table of contents, which will be done after approval of the proposed revisions and before submittal to EPA. One of the things added is electronic links throughout the document. This document is available on the department's website. To make it even more useful, links have added in the document so when one is accessing the plan on the website, one can simply click on the link and be taken automatically to the referenced document. These additions will

allow staff to make use of advanced technology and provide access to the most current information available without having to go through a formal revision.

The following sections and appendixes in the plan were revised, and the acknowledgements and tables of contents. Ms. Shannon pointed out that they had a lot of assistance in doing the revisions, not just within DNR, but other resource agencies were involved as in the development of the original plan. As in previous years, the Nonpoint Source assessment section was revised. Section 6, the TMDL 303 D-list, Voluntary Water Quality Management Plan section was revised. This does not contain, at this point, the 2002 303 D-list. That is because there are still some blanks in the list that they received from EPA. Once they get those blanks filled in they will make the list available electronically and incorporate it into this plan. Section 7 they revise each year. That's the funding section. Appendix D is consistency review. This had to do with the consistency of federal lands and federal activities with the state's Nonpoint Source Plan. Appendix E, the Nonpoint Source categories. Appendix F, the 303 D-listed waters. Appendix G, the stream designation and outstanding waters of the state. They simply revised that to make it current with what the regulations contain and Appendix I, Watershed Implementation, which is substantially revised. They incorporated the current status of projects and current projects into that particular section of the plan. In the future they have talked about perhaps excluding that section from the plan and instead having a link to the website, which contains the same information. They may do that in order to save paper in the future.

In order to proceed with sending the plan to EPA for their use, and to comply with the conditions of the 319 Grant, they are requesting approval of the proposed changes. After the approval they will make any revisions that are requested and then submit the document to EPA. Ms. Shannon offered to go through each section that was revised, and entertain any questions. Also, in the interest of time, she offered to just respond to questions.

Chairman Herrmann stated for Ms. Shannon to briefly go through the changes.

Becky Shannon stated she had already discussed what happened with the acknowledgements and table of contents. She thinks it's important to note in the acknowledgements the large number of people that have been involved with the development of the plan so everyone knows it's not simply one person developing it. For the Nonpoint Source Assessment, information was added on macroinvertebrate and fish sampling data and updated stream team statistics. This is done yearly. For Section 6, the TMDLs, 303 D-list and Voluntary Water Quality Management Plans, an electronic link was added to the 1998 303 D-list, which is the one on the web right now, but this will be updated soon. A link was also added to the department's TMDL website so people can access current information from that as well. Under Funding Section 7, information was added about the IUP for Fiscal Year 2004. Ms. Shannon noted it was the proposed IUP and, if there are changes to any of it before submitting the NPSMP to EPA, those changes

will be made. Ms. Shannon reported that the federal budget was approved with the same level of funding or virtually the same level of funding for 319 as in 2003.

Regarding Appendix D, the Consistency Review, the Clean Water Act requires that states review federal assistance programs and development projects to ensure that they are consistent with the states Nonpoint Source Management Program. Staff haven't formally engaged in a process to do this, however they are formally involved with many of the federal activities and federal projects that will be covered by this and so there is a review involved. For example, staff reviews all of the 404 permit activities, which would fall under this. Greg Anderson is on the staff now who has a very good understanding of the Land Reclamation activities. He has made some significant changes to that section to make it current and more accurate. With those changes, staff received updated information regarding that agency and their role under NEPA. The Bureau had recently revised all of their environmental policies and so staff added discussion of that. The areas of coordination and administration include Hazardous Waste Materials Management, Flood Plain Management, Dam Operation, Wetland Mitigation, Cultural Resources, and Activities under the Endangered Species Act in NEPA. Again those references were incorporated into the plan.

Appendix E, the Nonpoint Source Categories, there are a number of those. The primary changes made through those were simply to update references, to change any terminology that had changed during the last four years and also to ensure that the information was current. That particular section is important because it covers a lot of the specific activities that can be funded with 319 funding so staff is particularly cautious about making sure it is accurate. Under Agricultural, staff updated information using current crop production statistics for the state. Links were added to access specific crop production statistics in the Bureau of Census Agricultural Data so as people are developing their Nonpoint Source Grant applications, they can look through this link to the information that can help them develop their plan. Staff updated statistics on miles of impaired streams from the 2002 305 B report, added statistics regarding sheet and rill erosion, and conservation tillage. They also added an electronic link to the conservation technology and information center, which again is a valuable source of information for anyone doing planning. Staff linked to the University of Missouri's Atrazine best management practices guidance documents. Staff updated statistical information on irrigated land, incorporated information from Phase II stormwater guidance that was pertinent to the agricultural sector, and added information on Phase II stormwater issues in other sections as well. Statistics were added on water quality impairments relative to abandoned coal mines, tables on major pollutant sources and major contaminants that create water quality impairments, again to make this a more usable document. CAFO and AFO information was updated and several links were added so that people can get current information. Staff incorporated information from the 2002 Farm Bill, which was lacking of course in this since it hadn't been revised. They incorporated information from the 1999 Unified National Animal Feedings Operation Strategy and a link to that. They added an electronic link to USDA's NRCS field office technical guide. A lot of the people staff works with use those particular guidance documents so this is a particularly

valuable link. Staff also updated the best management practices tables. Most of those changes reflected changes that NRCS had made in terminology and technical practices.

Under silviculture or forestry staff updated the statistics and provided a link for additional information. They also added a link to the MDC field guide that describes forest management practices for Missouri land owners. Under construction, staff incorporated the Phase II stormwater regulation information, updated information on NPDES permits, the statistical information, and provided electronic links as appropriate to information about those permits. To the section on urban, suburb and stormwater, staff added an electronic link for a technical guide on stormwater, an electronic link for the water quality regulations and one for the center for watershed protection website. The headings that Ms. Shannon is going through were established by EPA as the categories they need to address in the Water Protection Program and when they do reporting to EPA, about their grant activities, it is under these headings that's consistent across the nation. For resource extraction, they updated regulatory citations.

Under stowage and disposal of wastes, staff added information about wastewater stowage, or what to do with wastewater from a boat while it's on the water, and no discharge zones. They added electronic links to various guidance documents and workshops relative to this. For on-site wastewater disposal systems, staff updated the guidance and information from the Department of Health and Senior Services and referenced the 2003 Memorandum of Understanding that the department has with the Department of Health and Senior Services regarding on-site wastewater systems. For solid waste landfills, staff updated statistical information and added electronic links. They also removed information about the Missouri Flood Grant because that was outdated and no longer applicable. In the Hazardous Waste section, staff added a link to the Hazardous Waste Law and also updated statistics on environmental emergency responses. For Hydrologic Habitat Modification, staff added information and updated statistics on Wetlands Mitigation Banking that occurs in Missouri. For Other, staff updated statistics on underground storage tanks and significantly changed the information that they have relative to mercury. The program has a lot more involvement with mercury based on the 2002 303 D-List than they've had in previous years so that section was updated.

Appendix G was simply an update of the tables to reflect the current format and status that is in the regulations. For Appendix I, Watershed Implementation, staff updated the summaries of all the projects that are funded with 319 Grant funds and they updated summaries of all the Agriculture Nonpoint Source Special Area Land Treatment Grants, the AGNPS SALT grants, as they are sometimes called. Ken Strumph has spoken to the Commission before about those grants. Those are really a vital component to Nonpoint Source activities, and Missouri is unique in the nation in having that particular funding source and being able to complement the 319 activities with the AGNPS SALT funding activities as well. Ms. Shannon offered to answer any questions.

Chairman Herrmann added he tried to access the Guidance Document from EPA at which point his computer said there were 92 pages. Malinda King was kind enough to send him a copy. It's a lot of bedtime reading. Chairman Herrmann noted what Ms. Shannon was looking for is approval of the concept to proceed further.

Becky Shannon clarified they are requesting approval of the revisions and when the documents are approved, staff will submit them to EPA. What they will do is proceed with their year four revisions and come back to the Commission with those. This is a continual revision process that they are undergoing.

Chairman Herrmann asked if there were any questions.

Commissioner Easley asked Ms. Shannon when will she have the year four revisions to the Commission.

Becky Shannon stated she didn't have an answer for that. It would be as soon as she could but she hasn't evaluated the time frame on it.

Commissioner Easley asked Ms. Shannon if she anticipated it in the next few months.

Becky Shannon replied no. The end of this calendar year would be her goal.

Chairman Herrmann asked if there were any further questions. Chairman Herrmann entertained a motion relative to the staff recommendation.

**Commissioner Easley moved to accept staff's recommendation. Commissioner Kelly seconded the motion. All Commissioners and Chairman Herrmann voted yes.**

Chairman Herrmann stated they had instructions to have a 10 minute break.

### **Water Quality Standards Revisions**

Jim Hull stated he would like to preface Ms. Shannon's discussion by indicating when the minutes were approved this morning, there was one that was pertaining to a teleconference call on January 7<sup>th</sup> where the Commission gave direction to the program on certain revisions to make to the program's regulations pertaining to Water Quality Standards. There was not the ability of a lot of folks to participate and listen to that conversation. There has been a request from the Missouri Farm Bureau to recap that discussion. Mr. Hull would like to have Ms. Shannon go through the changes they were planning on making to the regulations and the time frame for that. Chairman Herrmann had a question pertaining to that, Mr. Hull had received a letter from him, so at one point during Ms. Shannon's conversation Mr. Hull may attempt to clarify that. Mr. Hull directed Ms. Shannon to go through the major changes that were discussed on the January 7<sup>th</sup> conference call.



Becky Shannon mentioned to the commission that after the January 7<sup>th</sup> meeting they sent a letter to EPA. There should be copies of that letter in the Commissioner's information describing the actions that were proposed to take based on their direction. Also there is a copy of an e-mail that was sent after the letter to clarify a question that EPA had, so the Commissioners should have copies of those.

The first item on the list that was discussed at the January 7<sup>th</sup> meeting, in terms of changes to Missouri's Water Quality Standards, has to do with Wetlands. This was an item that was disapproved by EPA in their September 2000 letter to the department. This was a situation in which EPA had recommended some changes to the regulation and the Commission directed staff to proceed with proposed revisions to the rule in a manner consistent with what EPA recommended in their September 8<sup>th</sup> letter. The next item that was on the list was addressing Whole Body Contact Recreational Use, sometimes referred as the swimmable portion of the swimmable/fishable goals of the Clean Water Act. The Clean Water Commission directed staff to designate all classified waters, that being specifically all waters that were listed in tables G and H in 7.031 of the regulations. Staff was directed to designate all of those waters for Whole Body Contact Recreational Use and to include an implementation schedule for permitted facilities that would be effected by this particular change. The next item that was discussed was Antidegradation Implementation Procedures. These are procedures that were discussed. They discussed whether or not they should be incorporated by rule. The conclusion was that the Commission directed staff to include in a proposed rule a reference to the procedures. The procedures themselves though would be developed by staff over the next period of time. No action was proposed relative to designating unclassified waters for fishable/swimmable for the Whole Body Contact Recreation. The next item was on mixing zones for streams with .1 cubic feet per second or less of flow. The Clean Water Commission directed staff to disallow the mixing zones for these areas. Currently the Water Quality Standards do allow mixing zones for these very low flow streams and the Commission directed staff to remove that particular allowance. The last item was High Flow Exemptions. EPA had indicated to the department they felt the High Flow Exemption, currently in the Water Quality Standards, is too broad. After some discussion, the Clean Water Commission directed staff to include in a proposed rule some type of quantifier relative to the High Flow Exemption. Discussion was held about an example specifying a 25-year, 24-hour storm event as being a trigger for the High Flow Exemption, but the Commission didn't direct them as to what specific quantifier should be included, but rather that there should be a quantifier included in a proposed rule. The rule that they are discussing would be proposed. What has been committed to EPA is to publish it in the Missouri Register by July 15<sup>th</sup>. In order to do that, as indicated at the January 7<sup>th</sup> teleconference call, they had to move very quickly to incorporate changes to allow for the rulemaking process in order to get it into the Missouri Register by the July time frame that had been specified. Staff are working very hard to try and finalize those changes this week. Ms. Shannon asked Mr. Hull if there was anything he wanted to add.

Jim Hull stated he wanted to follow up on her discussion pertaining to Whole Body Contact. Chairman Herrmann had sent Mr. Hull a letter indicating that he felt there were

many instances in which stream segments that received no discharge from treatment facilities, and they were talking about a delayed implementation date for compliance date for permitted facilities. It sounded like what Chairman Herrmann was asking was what the date was that the Whole Body Contact designation would be for those other stream segments that did not receive a discharge and that designation would be effective on the effective date of the rule. The Use Attainability Analysis that was talked about previously could be done to justify removing that designation but that would have to occur through another rulemaking to remove those from the list. Mr. Hull asked Chairman Herrmann if that answered his question and he would be glad to try to clarify further if it didn't.

Chairman Herrmann stated he thought the whole approach is impractical and impossible. If everyone in the state who operates a treatment facility, whether it be a small little community, a village, a rural school, maybe even a sheltered workshop, is told that any public entity who is operating a treatment facility has got to put in disinfection in order to meet the Whole Body Contact standard that is being proposed, that is relatively easy. They are operating a little package plant, so the easiest, most convenient, and most used method of disinfection is put in a gas chlorinator on the effluent pipe. A meter to pace the feed equipment is needed, and chlorine cylinders and feed equipment are temperature sensitive, so the equipment has to be housed. Now they have to provide at least a one hour detention for contact time for the chlorine with the wastewater, so that adds a considerable cost. But if you disinfect with chlorine gas, it reacts with organic compounds in both the wastewater stream and the stream to which they are discharged and produces trihalomethanes, which are toxic to aquatic life. So all of a sudden they have added on to every one of these little treatment plants more cost than the original plant and there is no way that those entities can afford it. Remember back to the time when the Commission passed the phosphorous limitation on Table Rock Lake. It was realized that there was no way those little towns and cities, including the City of Springfield, could meet those phosphorous standards with their financing capability. The federal government came down and bailed our fannies out of the mud by providing supplemental funding. If they are going around to tell every little community, every little rural school, every entity which has a treatment plant, that regardless of what the quality of their discharge and what impact it has on a stream with which they are discharging, but we're going to put a requirement for disinfection on there, there is no way that could ever be financed. In the legislature now is a bill requiring a financial justification and the people to whom it will impact. So if they are going to go to the legislature, and say they are going to do this, and the financial impact of this over the entire state is lord knows how many dollars. There is no way that thing is ever going to see the light of day out of the legislature.

Jim Hull responded in reaction to Chairman Herrmann's comments that he makes some valid comments and observations. They had intended to incorporate in the regulation a delayed compliance date. Keep in mind there is a lawsuit against EPA by the Coalition for the Environment that if they do not follow through and designate those waters and

Whole Body Contact, EPA will. Mr. Hull said that they do not have to do it just because that is going to happen.

Chairman Herrmann clarified that his reaction to that is that if EPA attempts to promulgate that rule under the pressure of a lawsuit, it requires a public comment period and at this time he thinks they could forcefully argue that is a bunch of malarkey.

Jim Hull added what they are talking about also is a proposed rule that would have a public comment period included with it. He is sure they will hear more comments to the same during that period and that may influence the final rule.

Chairman Herrmann stated in the proposed revisions there are only two conditions in Table A of Chapter 7 which qualifies or disqualifies a stream for Whole Body Contact. One is 200 counts per 100 milliliters of bacterial count. That is supposed to be changed to *E. coli*. That is not included in the suggested revisions.

Becky Shannon replied it is included in the suggested revisions.

Chairman Herrmann stated he hasn't got anything on it.

Becky Shannon replied they had talked about that in July. Her staff presented information at the July Commission meeting in Columbia. They went through a list of changes that they were planning at that time. It was subsequent to that discussion, as they were moving forward with those proposed rules as directed by the Commission, that the lawsuit was filed so they had to back up on those remaining items.

Chairman Herrmann asked what was the proposed revision?

Becky Shannon replied the proposed revision for using *E. coli* instead of fecal coliform as the indicator bacteria for bacterial contamination just as Chairman Herrmann had stated. What they are planning to propose is an in-stream standard of 126 colonies per 100 ml. That is as opposed to the current fecal coliform in-stream standard of 200 colonies per ml.

Chairman Herrmann commented that the other one, and he didn't know what was the justification for it, he picked up out of review of table A was 2,000 mg per liter of boron.

Becky Shannon asked if the specific question was if that is a limit, would it be applied to Whole Body Contact use? Ms. Shannon said she would have to review that.

Chairman Herrmann stated it doesn't make any sense to him.

Becky Shannon replied she would review that and get back with Chairman Herrmann. She had not brought a copy of the rules with her. Ms. Shannon said if she could just briefly point out the way she would envision a facility such as Chairman Herrmann was

talking about under what is currently envisioned. A facility that is not currently disinfecting and is discharging to a classified stream would be impacted by the rule potentially when the rule became effective, which they expect would be no sooner than February of next year and perhaps later depending on how long the public comment period is. That stream would be designated for Whole Body Contact at that time. The facility would have three options in front of them. One would be just as Chairman Herrmann said, to go ahead and proceed with disinfection and incur the expense of that. Another option that they could begin pursuing rather quickly would be to evaluate whether their discharge is actually causing a violation of the in-stream standard so they can demonstrate that with their discharge, the receiving stream is still below 126 colonies per 100 ml of *E. coli*. If Ms. Shannon understands it correctly, they would be able to show that they don't need to apply disinfection because their wastewater is already adequately disinfected to meet the in-stream standard. The third option for them is to request that the Whole Body Contact Recreational Use Designation be removed from at least that segment of the stream that they are discharging to. The procedures for requesting that use be removed are being developed by staff and they hope to have those out to the public very soon. Ms. Shannon didn't have a schedule there. Ms. Shannon didn't know if anyone else could address others, but those are the three options that she would see for the situation that Chairman Herrmann described. They could disinfect, they could show that the in stream standard is already being met, or they could request that the use be removed.

Commissioner Hauser stated he couldn't agree with Chairman Herrmann more on his comments. All three of those options as he understands them are tremendously expensive and it's really forcing communities to spend money on problems that don't exist. In total they are really talking about harming the environment. They are forcing communities to squander resources needlessly that could be put to better use cleaning up water and he couldn't agree with Chairman Herrmann's comments more. The other thing to recognize is this is a regressive tax through regulation. Implemented through regulation. Commissioner Hauser doesn't think there is any other way to view it. You pass a regulation that forces people's sewer rates to rise dramatically that's what it is.

Chairman Herrmann read from 10 CSR 20-7.031 sub paragraphs 1(B) 8, it's a definition. Whole-body-contact recreation—Activities in which there is direct human contact at the surface water to the point of complete body submergence. Chairman Herrmann asked if that is proposed to be changed?

Becky Shannon responded no.

Chairman Herrmann stated for a theoretical exercise he went back to the one-tenth cfs that was proposed to remove mixing zones. If you relate to one tenth cfs flow, if it were contained within a 12 inch sewer pipe on a minimum grade as stipulated by Chapter 8 of the regulations, which is twenty two hundredths percent slope, if you calculate that, it produces a 2 inch depth of flow in that 12 inch pipe. That is one in which they are planning on regulating and one in which they are planning on causing disinfection of an

effluent to that stream. That 2-inch, if you are going to relate it back to our standards, relates to about 650 people. If you have a community of 650 people discharging this one tenth cfs to a little creek or something else, we are going to go in and tell them okay, either you produce a disinfected effluent or you get down there and test this stream for X number of months and prove that the *E. coli* count is down below the acceptable limit and therefore we ought to go through the rule making process, which is another year, and remove Whole Body Contact from that little stream and that is, to be blunt, stupid.

Jim Hull stated he would, at this point, follow through Chairman Herrmann's direction on the January 7<sup>th</sup> call to move toward proposing a rule. Again he mentioned that there will be a public comment period to receive comments such as this and others. It is still up to the Commission as far as final action on that rule and whether or not to approve it after changes are made or not made as a result of public comments. The Commission can always suggest to the Water Protection Program, or request to them, to withdraw the rule. Mr. Hull said right now there are several options that are down the road on how to address that even after it's proposed. He didn't know if at this point Chairman Herrmann was telling him to do anything different or not, he asked for clarification.

Chairman Herrmann clarified he thought the culmination of the telephone conversation was based primarily on the results of the legal actions and that is why he asked and suggested that the Commission have a closed session where they can get from legal counsel an update on that legal action. In either case he suggested that the Commission revisit this matter, if that is acceptable to the rest of the Commission.

Commissioner Hauser responded yes.

Jim Hull asked if there were further questions of Ms. Shannon.

Chairman Herrmann responded he didn't think so. Not at this time.

### **Pebble Creek Wastewater Treatment Facility Permit**

Nancy Brunson introduced herself and said she was there on behalf of Duncan Point Homeowners Association. She is concerned about several issues. One of the first issues was the minutes of October 22, 2003. She was told at that particular meeting of the Clean Water Commission that the Commission would get back with her in regard to their investigation. She has not got any results back from the Commission in regard to their investigation on the Wastewater Treatment Plant and also the results of the findings. She was under the impression, and maybe wrongly so, but during the October meeting it seemed to indicate that they were receiving some type of stay, if not a stay, then they would receive at least the results, and yet DNR has issued a permit. They have had zero results from their hearing in Kansas City but yet in spite, DNR has still issued a permit. They have received over 19 pages of deficiencies along with very little explanation. They still have not received any result in regard to the disposition on the deficiencies.

She was just given some information approximately 30 minutes ago from Michael Warrick as well as Bruce Martin on some documents she had asked for.

Ms. Brunson had asked for several of those documents to be able to file an appeal. The permit was issued on January 5, 2004. They were notified in regard to what actually was approved on January 14<sup>th</sup> and she has that document that was sent from the Attorney General's Office in regard to the disposition and the actual plan what they approved. She asked the Commission, there is a 30-day appeal period, that they start the clock on January 14<sup>th</sup> instead of January 5<sup>th</sup> in being that they received some vital documents just today which is January 28<sup>th</sup>. They are asking again that their appeal period be extended due to the difficulty in getting documents from DNR and the late notification of the approval for the Wastewater Treatment Plant.

Chairman Herrmann asked Ms. Brunson if she is familiar with the appeal process of the Commission.

Nancy Brunson answered yes sir.

Chairman Herrmann asked if that would be her attempt to file an appeal or the homeowners association rather.

Nancy Brunson replied the Homeowners Association does intend to file an appeal.

Chairman Herrmann stated he would suggest that would be the appropriate time for her to make presentations or arguments and the Commission could then hear her and rule on the validity or the justification of her complaints.

Nancy Brunson stated they are asking for some time sir.

Amy Randles asked if she could interject. She stated to Ms. Brunson DNR cannot do that, but keep in mind that she can file an appeal, that is real simple, and then after it's filed, amend it to add more information. But the 30 days has to run from the date the permit was issued. Ms. Randles wanted to make that clear to Ms. Brunson and said she knew Ms. Brunson was there with someone. It has got to be within 30 days from January 5 of 2004.

Nancy Brunson asked even though they didn't receive notification and they are parties of interest and didn't receive appropriate notification?

Amy Randles stated she was trying to help her by making sure she understood. But the department cannot give more time. Just get something on file and then add to it after you get the process started, but don't miss that deadline if you want to appeal.

Chairman Herrmann stated he thought just to say that the Homeowners Association appeals this permit, and then as Ms. Randles says, fill in the blanks and your presentation and justification follows that.

Nancy Brunson asked what about the construction of the plant itself. This gentleman is constructing this plant as she stands there. He is constructing this plant, so she is asking if that is the case, then DNR provide them with a cease and desist on this particular construction of the Wastewater Treatment Plant.

Amy Randles stated you cannot request that verbally at a meeting like this. You need to use the appeal process that is in the regulations and the statute. She doesn't know if their Homeowners Association has consulted with an attorney but they should do that. She doesn't even know whether the statutes afford for a stay, or provide an opportunity to request a stay, but if they do, that is the way Ms. Brunson has to do it.

Nancy Brunson stated she was appealing to the Commission because she was here in October and the Commission stated that they were going to get back with her and investigate and provide them with the pertinent information and now DNR is saying that it doesn't matter. The process is continuing on.

Chairman Herrmann said he remembered the conversations at the time. I think the Commission was saying that staff were going to get back to Ms. Brunson, not the Commission.

Amy Randles stated if Ms. Brunson appeals this, it is to the Commission. She hopes Ms. Brunson understands that.

Nancy Brunson said she does understand that, but she is asking for some consideration.

Amy Randles stated the way to do that is through an appeal.

Nancy Brunson asked if she should go on.

Chairman Herrmann stated he thought it would be appropriate to follow Ms. Randles legal advice and that is for her Homeowners Association to merely say they are filing an appeal before the deadline.

Nancy Brunson said she understood but would like to get some of her concerns on record.

Chairman Herrmann stated that would be the time to do it he thought. It can be done then if the appeal is filed. There will be a hearing officer to hear the appeal and come back to the Commission with a recommendation, one way or the other, wanting the Commission then to make a decision. That would be the time to present your justification and your complaints. Chairman Herrmann asked Ms. Randles if that is not correct.

Amy Randles stated there is nothing that prevents Ms. Brunson from making statements if the Commission wants to entertain them. The Commission always has the option to listen to any member of the public at their meetings, but Ms. Brunson needs to keep in

mind that if an appeal is going to be filed, the staff would be a party to that, they need a chance to rebut it, and it creates confusion about what is the record of the proceedings in the appeal. If Ms. Brunson is trying to address the Commission before she files an appeal, Ms. Randles thinks it's unrealistic for her to expect an outcome today when she is going to be filing an appeal before the Commission and asking them to make a formal decision.

Nancy Brunson stated the problem is that they are having a horrendous time trying to get documents from DNR such as the continuing authority document. They have been requesting those documents for the last 6 months. The latest continuing authority document was filed on December 4, 2003 and she just received it today from DNR. Ms. Brunson asked if there was anything that the Commission could do to help facilitate? She has sent sunshine letter requests. There is a delay in sending her the appropriate documents.

Chairman Herrmann asked if anyone had comments they would care to make at this time.

Jim Hull asked Bruce Martin if he wanted to make a comment.

Bruce Martin stated he provided Ms. Brunson a document she requested only yesterday by phone and he offered the document to her and provided it to her today. Yesterday is when she made that request. She may have made that through other parts of the agency that I am not familiar with but she was given that document this morning.

Nancy Brunson stated she has requested continuing authority documents almost a year and a half ago. There is a letter that was written approximately six months ago again requesting a continuing authority document. This whole process of the application changes so frequently, the documents have changed just as frequently, and therefore it is really hard to keep abreast in terms of the documents without the department paying attention to this particular permit and she is very concerned about the process. Duncan Point is a historic resort at the Lake of the Ozarks and they are very concerned about protecting the integrity of that particular community. What they are concerned about is, and she would like to put this on record, is that the continuing authority document that she received from Mr. Martin today, they had to hire a title company to go down and get that same document yesterday. They were sent a bill because Mr. Martin refused to fax it to her yesterday so they had to hire a title company as well as pay the Camden County one dollar a page for the same document that Mr. Martin refused to bring. What they are concerned about in the continuing authority document, there is no continuing authority. There is an escape clause in that particular document. There is no liability or responsibility for the Wastewater Treatment Plant and Ms. Brunson would like for the Commission to take a look at it and note on page A1 that save and except the following four tracks, 1, 2, 3, and 4 are exempt. Also there is no Homeowner Association mentioned in the document therefore they feel there is no liability for the Wastewater Treatment Plant and DNR is certainly aware of that. She has asked Mr. Martin to explain this, he said to talk to their lawyer about it. She is very concerned that if a document has



been presented as a continuing authority, there is nothing on the document that leads one to believe there is any liability for the Wastewater Treatment Plant. They feel that DNR is thwarting the process and it appears that they are concerned what is going on. Ms. Brunson asked if this is a state of regulations or is it a Banana Republic. Thank you.

Chairman Herrmann thanked Ms. Brunson.

### **Innovative and Alternative Waste Treatment of Hog Farms**

Bill Bryan of the Attorney General's Office commented he has been learning about manure his whole life. It didn't start when he got to law school. He remembers walking across the pasture with his uncle Barney and he said don't step in that or we will have to cut your leg off. They are trying to make that better so kids all across Missouri don't have to have their legs cut off if they step in some hog stuff.

Chairman Herrmann stated he would have to preface that with a little e-mail that he got and sent on to Jim Hull. It said the reason that they removed the 10 commandments from the Alabama Court House was primarily for the reason that if you post something that says Thou Shalt Not Steal in a building inhabited by a bunch of lawyers and politicians you have then created a hostile working environment.

Jim Hull stated he would have to object to that.

Bill Bryan stated he has learned more about hog waste management in the last couple of years than he has in his whole life. What they did was a settlement with Premium Standard Farms and Continental Grain Company in 1999. They set up a little different process than in their traditional settlement of a lawsuit. The court appointed a management advisory team but the way they selected that team was they had an expert for the litigation. He worked with that expert to identify 10 people around the country who they thought were the leading acknowledged professionals who knew how to deal with animal waste issues. From those 10 folks, Mr. Bryan interviewed the people and they have selected three experts. The three top people that they selected all agreed to be part of their panel. They are Dr. John Sweeten with Texas A&M University, Dr. Larry Jacobson with the University of Minnesota, and Dr. Mike Williams with North Carolina State University. The court appointed those three.

Chairman Herrmann said he thought that was Iowa State.

Bill Bryan explained no, Iowa State is one of the contracted companies that are providing some of the data and collection and analysis under the consent judgment. But the consent judgement required this panel of experts to be appointed that would have authority over the companies selection of next generation technology. They decided that the traditional parts per million analysis and approach wasn't working with this type of facility because the pollution didn't come out the end of a pipe the way they traditionally regulate

permitted facilities. It was something different so they took a different approach. But the panel does not supplant the department or this Commission's goal in any way.

Dr. Joe Engeln who is here today is going to provide some information specifically about the different technologies that the team has endorsed, and has a role in the consent judgement. He sits with the team, with the panel when they make decisions about the company's plans for each year. The plan, when it was initially approved by the Corp was for the company too and it was required to invest at least \$25 million in next generation technology over a period of years. The company has made significant progress and developed a variety of different technologies that are in place. The Commission has seen some of those and they have some exciting plans for this summer. Mr. Bryan thinks at this time it is probably appropriate. He brought some information for the Commission that they will want to look at as Joe is talking about it. But in case the Commission is ever afraid somebody would bring some hog manure to one of their meetings, he did but it doesn't smell, so he will pass it around and they can look at it. Joe is going to talk about the covers on the lagoons. The soft flexible felt like piece of fabric, that is a piece of the covers that are in place right now, and the more rigid piece of plastic, is the liner that is being used in the different treatment cells. If the Commission wants to take a look at that now.

Mr. Bryan introduced Dr. Joe Engeln, Assistant Director for Science and Technology with the Department of Natural Resources. He is an ex officio member of the technical team that is overseeing the project. Early on the team set some very clear directions for the company. They directed the company to try technologies, test technologies, prove that those technologies were effective and then implement them. They are at the state now where they have just about finished proving out a number of technologies and they have started some implementation the company is going forward with future plans for implementation. So far the team has approved about \$9 million in expenditures of all the tests and trials of things they have done so far. The team uses five major criteria. They aren't in order but the five main criteria that they keep in mind as they judge technologies are: Is it more protective of Water Quality? Does it address the phosphorus issue? In particular, in those lagoons, as sludge builds up, the phosphorus preferentially concentrates in the sludge, and as you know phosphorus is a major concern in terms of water quality so they split that off from the rest of the water quality issues. The last three have to do with air quality and odor emissions from the barns, lagoons, and spray fields, and so any technology that is tested they evaluate against those five criteria. The company has been supporting through this their funding in this consent judgement not only to testing a number of things on the farms, but they have also gone off the farms to look at things tested elsewhere. They have been to Philadelphia, Texas, and a few other places where technologies are being tested and they have had monitoring of all the activities going on in these facilities. The water quality criteria and monitoring has been more or less completed. They are still doing some monitoring of operations but those things have been tested out. They have done a great deal of air quality monitoring and odor monitoring. Those final reports are due, well they are a bit past due, but they are dealing with a number of universities with the Agricultural Research Service. Those researchers haven't quite got their final reports yet but they have requested and received

preliminary reports, which lead them to believe that those results allow them to make decisions even though they haven't got the final reports. One other thing to keep in mind is that EPA and a group called CLEAN, which is a group of citizens in that area that also filed, there was a consent judgement, which requires the company to achieve a 50% reduction of nitrogen at the point of delivery to the fields and so the two sort of fit together. The two together have driven them in the direction that they are going with this consent judgement. In August the team met. They had a lot of reports from the University of Purdue, Iowa State University and from the Agricultural Research Service folks who have been doing the monitoring to bring them up to speed on the latest results that they had had. Based on those, and based on the tours that they have had repeatedly, discussions with a number of members of the public, including a few of the Commissioners who attended the last team meeting or at least parts of the last team meeting. The expert panel actually made judgements on six different technologies. Two technologies which are called Crystal Peak Farms, which is a process by which the solids are separated out right before they would enter the lagoon, and then those solids together with nitrogen that is collected in a separate process, are brought together to produce a fertilizer product and the end result of that is actually in the jar there. That product has a good nitrogen, phosphorus, and potassium content. It has a good carbon content so it is a really good fertilizer. They have also determined a way where they can make it so that it has no odor, which makes it a very attractive product. There are no technical questions with the process for Crystal Peak Farms; the main questions are economic. Can the company do this without driving themselves into bankruptcy? They visited with our staff roughly two weeks ago where they discussed the permits to start implementation of the process on one of their facilities and they are hopeful that that will go forward.

Chairman Herrmann asked if that is going to be the total flow from that facility or is it a potted plant.

Joe Engeln answered it will cover the entire facility. That will be an alternative wastewater treatment for that entire facility. The second technology that was approved unconditionally was something called the Water Reuse Project and Chairman Herrmann has seen that at the Homen Farm. They have been testing a number of things sort of at the back end to tweak this, that is also a mature technology. It would be put on the back end of another technology most likely and allow that water to be treated to such a level that it could be re-fed to the hogs. So it would close the loop and it has the advantage that first of all it makes the company more resilient to the vagaries of weather in Northwest Missouri. They have been struggling with water supplies over the last couple of droughts and secondly it allows them to discontinue in large part in spray fields, and so it reduces the cost of that in operating spray fields, the risk to water quality that come about from just system upsets, pipe breaks, valve breaks and things like that. Other technologies have been approved at other levels, less than full approval. For example, one of the promising technologies that was sort of a late comer was the application of essential oils to the barns. These essential oils keeps down the dust, they also have the advantage of improving the quality and it looks like a slight reduction in the amount of odor emitted from the barns. Those who were with them on the last tour may remember

that some of the local citizens were there and they were making the case that after the lagoon covers were in place, and other things were done, the barn odor is really what they noted at their house and that really led them to look at some of those things. The company has been aggressively implementing a lot of different trials here. Different oils give them different benefits, different application schemes give them different benefits, but the team has said that is part of the solution.

Janice Greene asked where the oil is used.

Joe Engeln explained what they do is spray it in a fine mist in the barns themselves and what that does is it interacts with some of the chemicals that cause odors. It also keeps down the dust levels.

Janice Greene asked then do they have a disposal problem with the oils.

Joe Engeln replied no, they are organic oils so they are not. That is essentially what the word essential means is these are not things that are naturally created but they are natural. For example, one of the things they tried was soy bean oil which worked alright but it created the problem that it was very slippery and it created a health hazard for both the employees and the hogs in the barn. They have switched to other ones, which do not create those health hazards or work hazards. The semi-permeable lagoon covers, and there is some of that material going around, have been approved as part of the solution. Having stood on a 95-degree day on the edge of both a covered and uncovered lagoon, Mr. Engeln can testify that it does make a substantial improvement in the air quality and the odors right along the lagoons. Down wind is expected as well. They have had some faults with those. They are working on different possibilities to make sure that those work effectively. The last technology which is actually one of the first ones tried is fully in place now at the White Tail Facility. It is now called Anaerobic Nitrification and De-Nitrification process or AND Process. It includes lagoon covers and other things. It actually changes the Nitrogen from Ammonia first to Nitrogen Oxides and strips off the Oxygen through a set of processes and actually delivers that Nitrogen to the air as N<sub>2</sub> Gas. N<sub>2</sub> Gas makes up 80% of the atmosphere. It's odorless, it's colorless, and thus what they are doing is they are changing the Nitrogen from something which does cause a problem within the streams and in the air into something which is harmless and also odorless. That was determined not to independently meet the next generation technology and if they go back to their five criteria it is because it was not viewed as effective on some of those five criteria and in particular for example it does nothing to address the phosphorus issue. It does have some air benefits but not as great as some of the other things. The final thing that is out there is the Internal Re-circulation Process. This is actually the thing that separates the solids very effectively from the rest of the materials and the solids carry many of the chemicals, which end up being odoriferous once they are in the lagoon. It also collects a lot of the valuable nutrients. That was separated out because the team recognized that there are a lot of technologies people looked at elsewhere. In particular there is a somewhat parallel judgement in the state of North Carolina where they are looking at a number of technologies including a number of

technologies that are based on digesters of various sorts, and so if you took the IRS process and separated those materials out, that could lead into any one of those digesters. So the team recognized that as a stand alone doesn't work but it might serve for the company to then filter that material into a digester to produce methane gas and other things to reclaim those nutrients for a fertilizer product. Right now they are at the state where, as he said the company has got the Anaerobic Nitrification, De-Nitrification in place at White Tail. They are talking they expect within about 30 days, to receive a construction permit for implementing the Crystal Peak at another facility and so they will have those two and then they will see how they work forward from there. The good news is that after about 4 1/2 years they have got all the technical wrinkles behind them, they are confident, and they know how these things work. They know what sort of results they can expect from those two technologies that are the leading sign of things.

Chairman Herrmann commented that when the Commission visited White Tail, it was where they had the Anaerobic Digester in potted plant studies; they were not capturing the methane gas. They were flurrying it off and that is a waste of a valuable resource in sustaining the operation of the plant also to generate some electricity for the plant. Chairman asked if that has changed any.

Joe Engeln responded they would actually want to capture that gas and use it onsite because the Crystal Peak Farms process in total does have a digester in it and the goal for the company is to use much of that gas to actually keep the temperature in that digester at the optimal rate. That is something they would like to do onsite. He also noted, and this is separate from the consent judgement though all these things obviously interact, they are working through the Energy Center with the company to look at some other potential energy options up there for the methane and for other things that they produce.

Chairman Herrmann stated their water reclamation at Homen had some potted plant lagoons in which there were floating aerators placed. Those floating aerators as it was explained to him for the purpose of minimizing airborne spray odors. They placed a big steel hood over all of those aerators. His contention to that very seriously limits the oxygen transfer to the waste and the practicality of trying to achieve a reasonable oxygen transfer with a hooded aerator is in question in my mind. The other thing was they were going on to a soil/sand filter after that and it wasn't working the day they were there because it was a bit cold and naturally the filter was frozen.

Joe Engeln explained the water reuse plants would really go on the back end of either the AND technology or the Crystal Peak Farms technology because the advantages, you have cleaner water entering your system at the back end of either of those. If one did that, one probably wouldn't have the odor issue. You might not even need to aerate. The other thing Mr. Engeln pointed out is when they talk about water reuse, the goal is to run that at double volume during the warmest seasons where it is most effective and be able to shut that down during the winter and store the water temporarily during those times when you would have freeze ups and that way you can keep water in the system year round by over

producing during the warmer parts of the year with the knowledge that you are going to lose operations for sometime when it is very cold.

Chairman Herrmann stated the main reason for the question was that it's 14 months since the Commission's visit and at that visit they were given an end of the year, first year, report and his question was to Mr. Bryan that they are now past the second year and is there such a thing as a report and does that report have an evaluation to be implementable, a possible solution, and is there any progress made toward implementing those solutions on other than a potted plant operation?

Joe Engeln replied he could get those reports to Chairman Herrmann. There are reports. All the data is publicly available for anyone who wants it. Mr. Engeln will see that Chairman Herrmann get that. Mr. Engeln asked Commissioner Hauser if he had a question as well.

Commissioner Hauser stated he would also like to have the information.

Bill Bryan said he would send it to everyone. If you are not interested then fine but we can send it to you. It's not a huge volume of stuff. The work plans would be pretty significant. They may be able to send them to the Commission electronically and minimize the amount of paper they would have to disrupt their life, but they can get this information to them. To kind of take stock of where they are in this process they decided that it was better to get the right fix than to put in a quick fix that they determined later on wasn't going to be good enough and that's why there has been such an investment in the pilots and in the monitoring and analysis of the data that they have gathered and to take stock of where they are although the Advanced Nitrification and De-Nitrification project at White Tail that the Commission saw they don't think it's the best technology the panel said its not next generation technology but it does have tremendous water quality benefits. Dr. Engeln mentioned the 50% reduction in Nitrogen that they are required to meet. They are reducing Nitrogen by as much as 90% in the effluent that they land apply. In fact the land application of effluent from this facility is no longer limited on nutrients, it still is in the permits but as a practical matter it's now limited hydraulically by that volume of water that they have to spread not by the concentration of Nitrogen in that water. That is a tremendous leap ahead. In addition when they started, that facility by the way, is the largest Wastewater Treatment Facility in use on any hog farm anywhere in the world, whether its next generation technology or not it represents a quantum leap ahead from where they were just a few short years ago. The other thing that is a quantum leap ahead is when they started this process and when Mr. Engeln first met with some of the neighbors he heard a lot about the big guns. The aerial applications' spray fields that Dr. Engeln mentioned. Then the company was land applying almost 100% of their waste through the big guns on the spray fields and that was very objectionable to the neighbors because of the odor, the over spray, the various problems envisioned with that. Today less than 10% of the effluent is being land applied through a big gun. He thinks it's less than 5%. Mr. Engeln doesn't want to over state it but he knows 90% of their waste is now being disposed of in some other method so that

they are making significant progress and they are now at the stage where they are going to start to build out those technologies and get them in place at all of the facilities.

Commissioner Easley asked if any of those are going to be cost effective.

Bill Bryan indicated the companies are analyzing that and of course that's an ingredient they are going to have to calculate in. They are in business and Mr. Bryan understands that. They want to see them make the quality of life for the neighbors better, protect water quality, protect air quality and still stay in business. They are an important part of business in north Missouri.

Commissioner Easley stated it's fine if you're in the pilot project and getting a lot of this paid for.

Bill Bryan explained they have shared with them some information that he can't really discuss publicly, but when the Commission has their closed session he would be happy to stick around and share that with them.

Chairman Herrmann stated just to display his facetious and nasty nature, he made the comment previously that he would hope that the second report would report Ph and conductivity and something other than milligrams per liter.

Joe Engeln commented Chairman Herrmann was not the only one who noticed a few mistakes or typos. Dr. Sweeten is one who does not let much of anything pass by him unexamined.

Chairman Herrmann stated that was, he thought, the principle concern of the Commission as what is the end result. What is the endpoint? Are they just out there spending money to satisfy the court settlement or is there an objective, an achievable aim to the study?

Joe Engeln stated he thought what they will find is, as these technologies are built down on the farms, they are going to be far more protective of water quality, they are going to provide benefits to their neighbors in terms of air quality and the quality of the neighbors life. Mr. Engeln thinks the spray fields is one area, they are going to need to spread on many fewer acres when they finish this process which protects both air and water far better than they were able to do before this started. The team to their credit has a bunch of very practical men and they keep in mind the end goal rather than what people might fear is that they get into some sort of academic exercise. Discussions of technology and discussions of economics are very common at these meetings.

Chairman Herrmann stated the principle concern in producing the dry fertilizer at that time was the marketability. How can they develop the market and get it in the supermarkets and hardware stores and the other places to get it to the general public? That is still an ongoing part of your study.

Joe Engeln replied they have made some progress. He would not say that the company feels they have solved all the issues but they are still pursuing that.

Bill Bryan stated the effort is underway.

Chairman Herrmann asked Mr. Engeln if he will be available in the closed session to share with the Commission some of the legal entanglements. Chairman Herrmann thanked Mr. Engeln.

### **Budget and Legislative Discussion**

Scott Totten, Director of the Water Protection Soil Conservation Division, reported DNR received the Governor's recommendations on the budget from the his State of the State and there were some core reductions within the Water Protection Program specifically in the area of grant staff that administers the rural water and sewer grants and the stormwater grant program. The state has not sold bonds for those programs the last couple of years because those bonds are retired 100% from general revenue. Interest paid on those and with the State of the State's general revenue that was a budgetary decision that was done. With no or very few grants to administer, then the need for staff performing those functions was viewed as unnecessary at least at this point in time. So there are 3.45 FTE and the general revenue that goes with those that were reduced out of the Governor's budget for the Water Protection Program. Part of those positions are vacant right now. There are some other positions to move those staff into so their expertise will not be lost, just the function will be lost for a period of time. Also removed from the budget was the FTE that is doing the voluntary letter of approval program. It's similar to a permit program but it's voluntary. They have received no fees to do the work and the staff working in the letter of approval will not able to perform that function after June 30<sup>th</sup> if the Governor's budget is approved. In addition there was a retirement bill passed last year that provided an early retirement benefit to staff who took retirement between February 1<sup>st</sup> and August the 31<sup>st</sup>. There were several staff in the Water Protection Program that availed themselves of that and the division as a whole was allowed to refill one of four positions unless they were 100% federally funded. In the Water Protection Program typically there are few positions that are split funds between federal and other funds and therefore did not meet the test and so they are losing two positions. They are two Environmental Specialist positions as a result of the early retirement bill. In addition there was some E&E reductions in general revenue along those same lines but those were minor amounts. The Governor's budget was presented to the Senate yesterday. They had a few questions, of course they can only do information, they can't really mark anything up until they get a bill from the House. They are meeting with the House Budget Appropriations Sub Committee in the afternoon and in the evening will go over the Governor's budget with them so they will find out more about that. Earlier that morning there was a hearing with the Ag Committee on a CAFO bill that would put Missouri's statutes in line with the new federal regulations on CAFOs and that hearing went well. Mr. Totten asked if anyone had questions related to legislation or budget.



Chairman Herrmann stated he might be interested in hearing from Mr. Totten and perhaps Mike Alesandrini on Senate Bill 949.

Scott Totten responded he had not seen that one have a hearing yet.

Chairman Herrmann stated he attended along with a few other people the hearing a week ago last Tuesday. Mr. Alesandrini also made a presentation as a proponent along with a few other people.

Scott Totten responded he was not involved in that.

Mike Alesandrini stated he was unable to get to the hearing yesterday morning due to weather. He believes they exec'd out yesterday morning though.

Chairman Herrmann asked if that was the extension of the hearing.

Mike Alesandrini stated the Administrative Hearing Commission.

Chairman Herrmann responded yes, they continued that one a week ago last Tuesday.

Mike Alesandrini, RCGA, responded right and he thought they exec'd out yesterday. He's not positive of that, he doesn't know if anybody else was at the hearing, but he thought they said that it was a very short hearing and that is all they did was exec'd it out. Then Senate Bill 939, which was Senator Klindt's bill on the Regulatory Impact Report was actually perfected on the floor yesterday.

Chairman Herrmann asked how about 901, which he doesn't think is at a hearing yet he thinks it's coming up this week.

Mike Alesandrini responded he thought so. He doesn't know if it's this week or next week. He doesn't have a feel for that yet. He thinks there are some technical issues in it to determine whether or not it does what it's supposed to do. He thinks that the issue that has been raised is it wasn't positive it was effective at doing what it was intended to do. He doesn't know that there is opposition to it as much as question as to whether or not it is technically correct and there is, he thinks, some work already being done to try and address that.

Chairman Herrmann stated he thinks as he reads it it's only a transfer of the responsibility from the Clean Water Commission to the Hazardous Waste Commission and that's the total change of the bill.

Mike Alesandrini stated he doesn't want to speak for them, but he thinks the question was not whether or not that transfer should happen, but whether or not technically the way the rule is crafted if it does happen what it's intended to do. He believes that from a

conversation he had last night. He thinks that was the question the Commission wanted to review technically, whether or not it did what its ostensibly supposed to be doing in making that transfer. He doesn't want to speak for anybody else but that was his understanding.

Chairman Herrmann said thank you and asked shall the Commission proceed with the break for lunch and simultaneously have our closed session?

**Commissioner Easley moved that the Clean Water Commission go into closed session to discuss legal, confidential, or privileged matters under section 610.021 section 1, RS Missouri, personnel actions under section 610.021 section 3 revised statute of Missouri personnel records or applications under 610.021 section 13 revised statute of Missouri or records under section 610.021 section 14 revised statute of Missouri which are otherwise protected from disclosure by law. Commissioner Kelly seconded the motion and all Commissioners and Chairman Herrmann voted yes.**

**Commissioner Hauser moved for the Clean Water Commission to come out of closed session and go back into open session. Commissioner Greene seconded the motion and all Commissioners and Chairman Herrmann voted yes.**

#### **Risk-Based Corrective Action (RBCA) Rule Analysis**

Jim Hull introduced Ed Galbraith, Director of the Hazardous Waste Program, to walk through the paper with the Commission. As the Commission may recall at their December 11<sup>th</sup> meeting, they asked that staff form an analysis of the process of promulgating rules to implement the RBCA process in Missouri and whether the rule should be promulgated by the Hazardous Waste Commission or the Clean Water Commission, or both, or whether there could be a general rule that would handle it. It could be done by one Commission or the other. Most of the lion's share of the work on this was done by the Hazardous Waste Program in coordination with the Water Protection Program. Mr. Galbraith has graciously taken his time to come walk the Commission through the process as has been laid out in the paper. Jim stated he would let Mr. Galbraith handle whether or not he wants a recommendation from the Commission but they are looking for whether or not the Commission is okay with the process. Mr. Galbraith still has to talk with the Hazardous Waste Commission about this at their upcoming meeting and then go back to the stakeholder group. A final draft was provided to the Commission in their packets. Mr. Galbraith has made a few revisions to it since then and that is what was handed out a while ago.

Ed Galbraith reported he would try to make this very brief. This is a mark-up of what was already provided to the Commission in their packets. He apologized for having to make last minute changes and that they didn't get a final version the first time. Out of town meetings and some dental work put him out of commission for about 10 days and he wasn't able to get to this in a timely way so he just wanted to go over briefly the

changes that he has made to the document. He also provided the Commission with a flow chart or an outline that might help them conceptualize it better and he provided the two documents to everyone in the audience. Regarding the draft with all the words on it; basically the purpose of Mr. Galbraith's changes was to make everybody aware that there is a tanks and underground storage tank component to the rule process, and he wanted to make sure that was very clear because they have stakeholders in the tanks community that want to make sure that their concerns, as far as the rulemaking, are addressed.

Take note on the first page, besides the title that's inserted at the top, at the bottom, step one, as far as outlining recommendation, step one would be the Clean Water Commission or the Hazardous Waste Management Commission pending outcome of legislation, promulgates risk based corrective action rules pursuant to Chapter 319.109, which is actually a risk based statutory reference that actually precedes the reference that is contained in the Clean Water Law. They want to make sure that the tanks community understands the intentions there. When Mr. Galbraith refers to outcome of pending legislation, Senate Bill 901 in the legislature this year would transfer the authority to hear rulemakings for tanks from the Clean Water Commission to the Hazardous Waste Management Commission. The department supported and forwarded that legislation in the Governor's package simply because the tanks group fell under Mr. Galbraith's jurisdiction and administratively feels it would be easier to handle tank's issues before the Hazardous Waste Management Commission. He thinks considerations of the very full plate that the Clean Water Commission has, and will continue to have, supports that rationale as well. Mr. Galbraith moved a little bit off the Commissioner's plate and put it on the Hazardous Waste Management Commission that admittedly doesn't have as much work before it at the current time.

Changes on the second page, step two, the Hazardous Waste Management Commission would promulgate risk based corrective action rules under its authority to manage cleanups of contaminated sites. Why the Hazardous Waste Management Commission? Because although cleanups happen in the Water Protection Program, they also happen in the Solid Waste Management Program and Land Reclamation Program. Ninety-five percent to ninety-six percent happened in the Hazardous Waste Program under various super funds, voluntary cleanups, tanks, and various authorities. Step three, Clean Water Commission incorporates the previous rules by reference meaning those rules promulgated by the Hazardous Waste Management Commission referenced in step two and makes changes to its regulations where needed. This would all be done pursuant to Chapter 644.143, which is the risk based ground water reference that is in the Clean Water Law. Step four may be adopted by reference by the remaining environmental commissions and advisory boards so if the Solid Waste Advisory Board wants them to have a rule or the Land Reclamation Commission and so forth, they can also reach out, take that rule, promulgate it by the Hazardous Waste Management Commission and say "yes we incorporate that by reference for any cleanups done under our Commission." That's the reason for those changes and that really is the heart of all the changes. The rest are sort of footnotes to the same kinds of improvements with the exception of the very last page, there is a reference to the appeals process and again this is a little

confusing. Generally, they feel that any appeals of risk based corrective action should first go to an internal board to resolve any technical differences and that is not changed in this version. That is as it was in the first version that the Commission was given. Where it gets complicated again is with this whole business of the Tanks being under the Clean Water Commission, but yet in the Hazardous Waste Management Program. They can't answer the question today of how appeals will be handled because they don't know yet the outcome of this legislation. Generally though they feel that appeals should be heard by the Commission or board that promulgates the regulation for that program. The last change proposed action on that same page.

If this recommendation meets with the Commissioner's support, they would propose that the department take this recommendation to their stakeholders committee, which is meeting next week on February 5<sup>th</sup> as a straw man or proposal that would hopefully meet with their approval as well. The stakeholders committee is very interested in how the outcome of the rules and how the legal structure will be handled. Mr. Galbraith thinks they have hit on something that will work that will minimize two programs, two Commissions being engaged in decisions on every cleanup. That is what they want to avoid. They do not want to have duplicity. He thinks everyone agrees with all the overlap of the statutes, its complicated, but he thinks they have found a solution that will meet the intent of the law and also be practical and implementable with the least amount of duplication and so forth. This is four pages of words, and this was his attempt to just put it in boxes the concepts embodied in this document. Basically understand from the outset that there is to be an over arching RBCA Rule and there is also a Tanks RBCA Rule. The idea is that for technical, and also frankly for some political reasons, it is advisable to have a rule for Tanks that is consistent with but is clearly separate from the over arching RBCA Rule and that is an issue that has been discussed at length with the stakeholders. They made it very clear that is their desire and there are sound technical reasons for doing so. Basically tank cleanups are a limited number of chemicals of concern and they are all pretty uniform so you can do a more simplified version of a risk based corrective action for tanks.

On the left hand of the paper is sort of how they would do the over arching rule. The Hazardous Waste Management Commission would pass a detailed rule for risk based corrective action of soil, groundwater, and surface water under its authority to define hazardous waste and how it will be cleaned up under 260.370 of the statutes. At the same time the Clean Water Commission would fulfill its obligations under 644.142 to adopt more of a generic or a general rule that would incorporate the Hazardous Waste Rule and also make some changes to Chapter 6 and Chapter 7, that as Mr. Galbraith understands from Mr. Hull are needed. The Hazardous Waste Program will implement its rules passed under its Commission. The Water Protection Program will implement the rules passed under its Commission. The Memorandum of Understanding (MOU) between the two programs will ensure coordination of more detailed decisions so that will take care of the over arching RBCA Rule at the same time the Tanks Rule will have sort of a life of its own. It will be promulgated by one or the other Commission depending on legislation. There will be a detailed rule encompassing soil, ground water, and surface

water. It will be promulgated under Chapter 319, which is the Underground Storage Tank Rule and it will be implemented by the Hazardous Waste Program.

Mr. Galbraith understands this now so if anyone is a little confused he understands, but if there are any questions he would be happy to try to answer those now. What they would be looking for is not so much a vote or a motion, but merely the Commission's consent to go forward and present this to the wider group of stakeholders.

Chairman Herrmann asked if this is dependent on the outcome of proposed legislation.

Mr. Galbraith replied on the Tank side it is dependent on that.

Mr. Hull stated as he indicated earlier, the Commission had asked for an analysis and a recommendation on how to go about the rulemaking, and so that's the purpose of the discussion today. He didn't know that they necessarily need to take a vote, but an expression of general support to go ahead and take this to the Stakeholder Group would give them an idea of whether or not the Commission supported the concept or not.

Commissioner Hauser replied it looks good to him.

Chairman Herrmann responded he had no objection, anybody else? There were no objections.

### **Public Comment and Correspondence**

Mr. Hull stated for those Commission members and those still in the audience, he had this topic added to the agenda. Normally whenever someone from the audience wanted to approach the Commission on a particular issue, that it was handled underneath the topic of Other. That just didn't sound very user friendly to Mr. Hull, so he wanted to make very clear in the agenda that there is a place for public comment to be received for any kind of questions or issues that the audience at the Clean Water Commission wanted to address the Commission about, and it sounds like Robert Brundage wants to talk about the Methodology Rule. He was not able to be here earlier. He was at the Capitol talking about CAFO legislation. Mr. Hull wanted to recognize Mr. Brundage.

Robert Brundage, MO-Ag thanked Mr. Hull. He expressed his regrets that he couldn't be there this morning but he did want to take an opportunity to visit with them. He stated he would submit written comments on the Methodology Rule but sometimes written comments just don't quite set forth everything you really want to say about it. He continued he was going to go through open areas in the rule that he had some questions about. He stated he had more questions than he had specific recommendations but thinks these questions need to be addressed in flushing out the Methodology Rule. Under the first paragraph, parenthesis one, it talks about acceptable Water Quality data for use in compiling a list of impaired waters, and it talks about the QAPPS Quality Assurance Project Plans and things like that. One thing he doesn't think is addressed is how Stream

Team data will be addressed by the department. He is fairly confident there is an MOU that talks about that and the Sierra Club has been pushing that, but it's simply not addressed in here and maybe it should be. It probably should be addressed in the rule rather than a MOU. His next comment was about old data. He knows in the last 303 D-List conversation there was a lot of discussion about old data, whether it should be used and to what extent it should be used. In the Methodology Rule it says data less than five years old is preferred but you can use data over five years old. It talks about data that is collected prior to significant events with the potential impacts on Water Quality in a given water shall not be used. He really doesn't know what they mean by significant events. He thinks that term is something that needs to be flushed out and better defined so we all know what the department is talking about.

Commissioner Greene asked where is that in here? She remembers reading it.

Mr. Brundage responded it's in paragraph one plan B, and he will try to go down just the column, and try to give out the numbers as he goes along. His point was significant events with potential impacts on Water Quality is vague and needs further definition. The next part Mr. Brundage had a comment on is sub-section 1 C. It says in general the department is only going to use level two data to list streams and Mr. Brundage would like to see that paragraph tightened up a little bit. He suggests deleting the word in general and make it a more objective standard. The clause that allows level one data talks about unless the problem can accurately be characterized by level one data, again that has no definition whatsoever and he doesn't know really when would be a good opportunity to use level one. So therefore, he thinks that should be tightened up in level two data as a general rule, even more than a general rule, should be the lowest level of data used to list a stream.

The next several paragraphs in parenthesis C, one, two, three and four have several terms of art, like - Cindy DiStefano from the Department of Conservation - Mr. Brundage is sure she knows what this means but he doesn't. It talks about qualitative sampling of invertebrates, and quantitative biological monitoring. In several instances, in paragraphs two, three and four we know exactly what we are talking about when we talk about quantitative biological monitoring. Mr. Brundage suggests that it be better defined in the rule. One part regarding the qualitative monitoring under level one and then when you get into quantitative biological monitoring in level two and three and four, one area why it would be very useful to define this better and to make this more clear is a prime example when EPA came up with their proposed list in Missouri. There were approximately 14 or more streams that they used level one qualitative biological monitoring and they try to convert it to quantitative biological monitoring using one biotic indices. That was an opportunity where EPA really, in Mr. Brundage's opinion, took a lot of liberties with trying to list streams with very minimal data, and the department and the Commission in their comment letters to EPA and in his comment letter to EPA objected strenuously to using that type of level one qualitative data. If you talk to people like Randy Sarver, Mr. Brundage believes they will tell you that if you are going to use quantitative biological monitoring like in level two, three, and four, that you

are going to look to at least four different biotic indices and he can't name them off. There is an EPT index and others. Mr. Brundage can't name them off but he does know they exist and suggests that those be flushed out and hopefully that will be enough to possibly discourage EPA from taking liberties with listing streams with very minimal invertebrate data that, in the department's opinion and the Commission's opinion, was not appropriate to list streams. This is an opportunity to hopefully clarify that and discourage that in the future.

Referencing the right column in parenthesis two, paragraph B one, narrative Water Quality Criteria. Mr. Brundage states this section has to do with the following means and may be used to determine whether waters are impaired and his comment on Narrative Water Quality Criteria is that its very subjective. He suggests that Narrative Water Quality Criteria be used in very few instances to list streams on the impaired water list. He suggests in his comments that Narrative Water Quality Criteria be used in conjunction with at least a level two, three or four data to confirm an impairment. To use Narrative Water Quality Criteria could encourage EPA or others to do drive by impairment listings where they drive by and just generally take a gaze at the stream and think maybe it has to much algae at one location, but over the whole course of the stream maybe its not impaired. So for that reason Mr. Brundage suggests that other more quantitative data be use in conjunction with Narrative Water Quality Criteria. His next comment had to do with two B two on habitat assessment protocols being used to list impaired or list weightable streams. A habitat assessment really is not an indication of Water Quality. Indirectly it can be. He suggests that in his comments, habitat assessment really not be used unless it aids you in looking at quantitative biological monitoring in trying to determine the cause of an impairment. Sometimes you may have a poor aquatic community and maybe its impaired by the chemical compounds in the stream, maybe its caused by channelization or maybe its caused by excessive temperatures because there is not enough shading along the streams so there is use for habitat assessments.

Mr. Brundage stated he doesn't think that it's really limited enough here in the language in the proposed rule. The next paragraph three, right below that, talks about watersheds that do not have monitoring data. The presence or absence of certain types of Water Quality Impairment may be judged on actual monitoring data from a stream draining a watershed with very similar geology and land use. He hasn't had an opportunity to talk to anybody in the department but honestly don't understand this one on how you can use data from a different stream to list a stream maybe close by that is in similar geology. That is indirect evidence at best and he doesn't really understand that one and suggests either deleting it or explaining how you can use data from different streams to list a similar stream as impaired that doesn't have any data on it. At the bottom right had column, parenthesis three, Creation of the List. Mr. Brundage noted several comments regarding this. First of all there is no process for D-Listing streams listed in there and knows that is a very controversial issue with EPA and people have differences of opinion on what the law requires. He expressed in his opinion there should be a sub-section in there that talks about how you D-List a stream and how he would submit to the Commission that part of the factors the Commission would look at would be things that

we have seen in the past: inadequate data and streams that were mistakenly placed on the list. Mr. Brundage asked what happens if you have a typographical error? He explained there were 10 miles of stream and accidentally typed 20 and now you have got 20 miles of stream on the list. That's a typographical error. EPA may tell you that you can't take that off the list no matter what unless you go actually and collect some data. But they would submit to you inadequate data or mistakes on the list, even if there have been opportunities where its been very questionable about politics involved in placing certain streams. Mr. Brundage reported he won't really go into more than that but there are opportunities where the list may be in error and there should be a de-listing process. Something he thinks is the biggest omission in this rule is a lack of discussion of how the list is going to put forth for public notice. He doesn't believe there is anything in there about how the list is going to be placed on public notice and thinks it should be and knows the department agrees with that, and the Commission agrees with that but it should be included in there. There should be a part that talks about putting the entire list on a public notice and then the question is what do you put on public notice? What do you make available to the public to allow them to submit more intelligent comments? In the past there has been more of a reliance on the department in saying they have public availability sessions come in and tell us what your data is. Well not very many people have data to submit to challenge or review the appropriateness of a listing. Instead, what more people do is they look at the current data and they look at the assessment of the department or the Commission. Is it appropriate? Is it a violation of Water Quality Standards? At various times that is a matter that can be debated.

Mr. Brundage suggests that you borrow a page out of EPAs book. In this last EPA listing cycle for Missouri, they placed on public availability every piece of paper that they were relying on for their 303 D-List and it took up nine banker boxes full of paper and they placed those in public libraries across the state. Mr. Brundage actually went through all 9 boxes. Sometimes he was going through a little quicker than other times but he did go through the data and it was there. He continued he appreciated that and that was a good process. The department in the past, although they might say well we will make that available to you, it is not that easy to go look at the departments data that they were relying on. They really don't have all the data in one place for people to look at and that is what he would suggest. He would also suggest that they have maps available to show you where the stream is and where the impaired listing begins and ends. A lot of times that is very difficult to ascertain. They might give you a WBID, which is a Water Body Identification Number and somewhere that is defined where that segment is but its not readily available to the public. Mr. Brundage suggest that maps be made available to the public to show exactly where the proposed stream segment that is allegedly impaired is so they can look at it and understand maybe where the data was collected and the like. He asked what is the format of the list when it is put on public notice? He believes in the past the format of the list has changed on several occasions and in the furious last moments of making revisions there has been things certainly changed and it made it confusing on trying to follow and track all of the changes. Mr. Brundage suggests that this Methodology Rule talk about what parameters are going to be placed on public notice. Largely he agrees with everything that has been placed on public notice in the



past on the list but one thing that he do not believe was on the list previously when they put it on public notice is a clear delineation between pollutants and pollution. Mr. Brundage reported we all know under that distinction, under EPAs guidelines, and under this methodology you would be adopting that depending on pollutant versus pollution distinction, you may or may not have to do a TMDL and that is very important for people to know if there is going to be a TMDL prepared on the stream. Finally there is a thing called the 10% Rule and again he doesn't think that is in the methodology document but it's the departments guideline that if 10% of the samples that they have on a stream show impairment, then they are going to put it on the list. That is not in this Methodology Rule from Mr. Brudage's reading of it, and he suggests that be placed in there for public notice for people to comment on. He is not sure if 10% is the right number. Somebody had to come up with that number and there has to be some kind of justification for it other than maybe it just seemed appropriate or its best professional judgement. He continued he is not sure but its something that he is sure the Commissioners will be interested in knowing - what that number is and whether or not that is the appropriate number or not.

Mr. Brundage reported one last thing regarding the 10% Rule, the length of impairment. He asked is that how many samples over an allegedly impaired stream segment are enough? He has seen instances where you might have a long stream segment associated with the WBID number and also say hypothetically 30 miles if you went out and took two samples along 30 miles, is that enough? It doesn't say in the rule if that is enough. If he submits to you that it is not enough, who makes that decision? Mr. Brundage reported he doesn't know how that decision is made. He sees instances in the last rulemaking where in 2000 the department went out and took some qualitative macro-invertebrate monitoring just over two days in one summer and EPA took that and ran with it and listed those streams. Again there may have only been two or three samples collected on a stream segment that might be very long and that is something that really needs to be addressed in this rule so when you look at the length of the stream, the number of samples alone in that stream that are required and what percentage of those are out of compliance with the Water Quality Standards when you list those. That's a whole variety of different things that are not addressed in this rule. That concluded Mr. Brundage's comments and he will submit those in writing for the Commission's consideration.

Chairman Herrmann asked have you got EPA's final 303 D-List? He stated to Mr. Brundage he might suggest in his written comments that if you review that in relation to level one data, its my assessment that EPA is very inconsistent in agreeing to D-List, and to insist on listing streams with level one data. If you review through that you may want to include something in your comments.

Mr. Brundage replied okay and thanked Chairman Herrmann. Mr. Brundage stated we will do that.

Chairman Herrmann thanked Mr. Brundage.

### **Other**

Jim Hull stated he doesn't know if there are anymore comments or any questions that anyone from the audience had.

Chairman Herrmann asked is there anyone else who wants to bring anything before the Commission that has not been addressed.

Jim Hull reported what he is passing out to members of the Commission is the organizational chart for the Water Protection Program. He explained he had talked previously to the Commission members on the January 7<sup>th</sup> teleconference call about this and furnished them at that time the major organizational structure for the program and the branches. The organizational chart he passed out has the remainder of the program, the makeup of the sections, and the units under those which the Commission asked be provided to them. Jim also brought approximately 20 or so more copies if anyone else wants to take one before the meeting is over. Mr. Hull reported since he talked with the Commission, there are only two things he wants to mention in addition, unless they have questions. The program secretary position is soon going to be filled. The person selected for that position will be on board February 1<sup>st</sup>. Her name is Marlene Kirchner. She is the secretary for the Solid Waste Management Program presently. Mr. Hull continued that the other thing he wanted to mention is that there are a number of vacancies throughout the program, mainly in the Water Pollution Branch. As you heard Mr. Totten mention earlier, we have lost a couple of those positions, at least presently, through the Governor's proposed budget. We will know more about how all of that turns out before the end of this fiscal year so there may be some boxes drop off of this list that are now vacant that we won't be able to fill. Mr. Hull asked if there were any questions that the Commission would have of him at this time.

Chairman Herrmann stated he thinks it is very helpful of Mr. Hull because they talked to and talked about several people on the staff and it's helpful and beneficial to know who that person is and where they fit into this.

Mr. Hull reported the other item he wanted to discuss was about the term referred to earlier, the Regulatory Impact Report. He distributed copies before the meeting started of a letter from Norella Huggins, Chairman of the Commissioner's Core Workgroup. There was a broad overall Board and Commission workgroup that the Department Director, Steve Mahfood, brought together to talk about various issues concerning commissions. Concerns that had been expressed to the department about Commission actions, how the meetings were held, and various other things, but there was a Commissioners Core Workgroup formed to talk about ways that the rulemaking process could be improved to address some of the concerns with that process. Mr. Hull noted one of the things that was talked about was the use of the Regulatory Impact Report, which would be part of the proposed rulemaking and would go more into detail about why the rule is necessary, the cost of it, various things that is part of the process now but it's not captured in one document in one place where people understand that. That was a recommendation of the Core Workgroup and I gave you the attached, a copy of what the department's proposing to be the Regulatory Impact Report and it would be applied to all new rules. Mr. Hull

continued to say he has a memo from Department Director Steve Mahfood dated January 16<sup>th</sup> that says effective immediately all new rulemakings will follow this new process and will complete a Regulatory Impact Report, so those rules that haven't yet entered into the system would need one of these prepared. The rulemaking we were talking about earlier, Water Quality Standards, one of these reports will be done on that particular rulemaking. The Methodology Rule is a little bit different. It has already entered into the process so it wouldn't have to be done on that one, but they are still going to be doing a number of things that would be considered to be part of that report as far as part of that process. Ms. Huggins' letter suggests that the various Commissions approve or adopt whatever the Regulatory Impact Report to be done by the department. He reported he doesn't know that the Commission actually needs to make a motion to that effect. If they choose to do that, that is fine, he just would like to know that they support this concept and agree with going forward and implementing what the department wants to do and putting together this Regulatory Impact Report not only for the department's behalf but also from the Commissioners Workgroup that worked on this one particular item.

Chairman Herrmann asked do you agree it would be well to officially adopt the document?

Jim Hull replied I think that would be great. It would be on record as far as this is what you would like for us to do.

Chairman Herrmann stated some people in the discussions were getting wrapped around the axle about this whole report and he pointed them to question number 3. Is this rule or rule amendment an adoption of federal mandates by referenced without variance? It has a box to check for yes. He continued that it says if it's yes, the remainder of the questions do not need to be answered. The Regulatory Impact Report is complete. So in those instances where EPA comes down and tells them, Hazardous Waste or any of the other groups that have to do this, and that's more particularly applied to Hazardous Waste because most of theirs are directly applied, all they have to do is fill in questions 1, 2, and 3 and they are done. But if the Commission thinks its prudent to accept and adopt this policy or report from the staff necessary, the Chairman would entertain a motion to that effect.

**Commissioner Hauser moved to adopt the Regulatory Impact Report. Commissioner Greene seconded the motion. All Commissioners and Chairman Herrmann voted yes.**

Jim Hull reported that also included in the packet of information, or it was mailed to them, was a status report on where they are with TMDLs and he believes they all have that information. They didn't put it specifically on the agenda. The important thing to note is that they were required at this point in time to have 34 done, and he is pleased to report they are past that mark with 45. Now they may not be the exact same 45 as they were supposed to do, but there is also the report that goes into the rationale as far as why some of the ones that they had intended to do aren't complete yet, so unless they have

any questions it's kind of for their information. If the Commission wants them to go into more detail at a future Commission meeting, they will at their pleasure. Mr. Hull stated the last thing he wanted to mention, and if you hadn't heard it yet, was that on the 23<sup>rd</sup> of January the Stormwater Permit was issued to the Holcim Facility that they have talked about before and he knew the Commission expressed an interest in it, so he wanted to let the know that had occurred.

Chairman Herrmann asked what was the date.

Jim Hull replied January 23<sup>rd</sup>. Mr. Hull asked Mr. Garrett if he wanted to talk about the schedule for future meetings and when they might need to have one pertaining to the bypass and funding.

### **Future Meetings**

Mr. Garrett responded he believes it was the last Commission meeting that Ann Crawford made a presentation to the Commission and requested that their current IUP be extended until June 30<sup>th</sup> to coincide with the State Fiscal Year. At this time they are preparing the IUP, which will be for fiscal year 2005, and in order to bring that to fruition they will need to have a public hearing with a 30 day advance notice and have that hearing before the Commission and then at a subsequent Commission meeting adopt the IUP.

Mr. Garrett went on to say, at this point they do not anticipate being able to make the March Commission meeting as a hearing with development of the IUP and having all the reviews done internally, so what they are asking is that the Commission would entertain scheduling a meeting in April to have the public hearing on the IUP and then have a subsequent meeting in May or June to take formal action to adopt the Fiscal Year 2005 IUP.

Chairman Herrmann asked Mr. Garrett if he had any reaction to a meeting in April?  
Chairman Herrmann took the silence to be affirmative.

Doug Garrett recommended the April 14<sup>th</sup> or 21<sup>st</sup> stating those are Wednesdays.

Jim Hull reported the Commission usually has sufficient items to discuss, but right now there is not any kind of rulemaking that needs to come back to the Commission with the next meeting. Mr. Hull asked Ms. Shannon if the Methodology Rule closes the public comment period, that they wouldn't need to meet next month in order to talk about it, so it was at her discretion. Mr. Hull asked if March 10<sup>th</sup> was the next meeting date?

Chairman Herrmann asked where the next meeting was going to be held.

Malinda King responded the next meeting would be held at the Governor's Office Building.

Chairman Herrmann asked if they are still inhibited by budget constraints.

Commissioner Hauser asked if March 10<sup>th</sup> was the same date the 319 grant review panel was going to meet.

Jim Hull stated the RFP is going out shortly. He indicated he doesn't know when the anticipated date is that the review panel would be looking at those.

Becky Shannon reported they will move the date to be later than March 10<sup>th</sup>.

Commissioner Hauser stated that as far as April, he has a preference for the 21<sup>st</sup> but he could do either one. He continued he didn't know how everybody else felt. Commissioner Easley said he prefers the 21<sup>st</sup>. I don't think he can make the 14<sup>th</sup> if we did it in April.

Chairman Herrmann asked if anyone else objected to the 21<sup>st</sup>? Chairman Herrmann noted the 21<sup>st</sup> sounded good.

Jim Hull clarified the 21<sup>st</sup> of April and asked if there was a preference for where since the Commission was meeting at the Governor's Office Building today and looking to have the March 10<sup>th</sup> meeting there also. Mr. Hull asked if they wanted to entertain a different location.

Commissioner Kelly asked if that was a public hearing.

Jim Hull replied March 10<sup>th</sup> would be a public hearing, and they probably needed to have it here. Mr. Hull asked Mr. Garrett if that is how it has been done in the past.

Doug Garrett responded right.

Malinda King stated March 10<sup>th</sup> is at the Governor's Office Building.

Chairman Herrmann asked Kevin Perry what was the 21<sup>st</sup>.

Kevin Perry replied the 21<sup>st</sup> was the Region 7 Environmental Conference. It is a four-state conference.

Jim Hull reported they are looking to have a public hearing on the IUP on that date. He didn't know if that necessarily needed to happen at the Governor's Office Building or not. Having it there makes it a little more convenient for the folks to come to it.

Chairman Herrmann asked Mr. Perry if that was a Tuesday, Wednesday, or Thursday.

Kevin Perry replied that it was all day Tuesday and half a day Wednesday.

Jim Hull asked if they had to have one on Wednesday, could they work on another date where it wouldn't fall at the same time as that conference.

Commissioner Kelly added she preferred the meetings are not on Tuesday or Thursday because she arranged all her classes.

Chairman Herrmann asked if there were any problems with the 28<sup>th</sup>.

Jim Hull responded to push it to the 28<sup>th</sup> and asked Mr. Garrett if that still worked for him.

Malinda King stated she thought they would want to go ahead and set a meeting for either May or June too.

Doug Garrett replied he would need a follow-up Commission meeting in May or June for the adoption of the Intended Use Plan.

Chairman Herrmann directed to make the public hearing on April 28<sup>th</sup> and then May or June would be the presentation and the end of the public comment period.

Doug Garrett responded yes.

Chairman Herrmann reported to hold the meeting in Jefferson City unless there is a reason not to.

Commissioner Kelly replied no. The public hearing is in April so this will be just the Commission voting.

Chairman Herrmann responded yes, they need not be there.

Commissioner Kelly stated she preferred after the 22<sup>nd</sup> of May, which is a Saturday, but after that.

Chairman Herrmann asked about June 2<sup>nd</sup>.

Commissioner Greene mentioned that Monday is Memorial Day.

Malinda King asked if that meeting would be in Jefferson City too?

Jim Hull replied yes. Mr. Hull stated Ms. Shannon just handed him a note, and they had talked about it, but he specifically wanted to mention to that they do have acceptance from the Corp of Engineers for many of the 401 Certifications and he doesn't remember the exact number now, maybe 16.

Becky Shannon replied yes that is how many they requested, 16 nationwide permits. We requested that our conditions be attached. The COE has accepted all 16. All five districts and all three divisions, all eight offices.

Jim Hull stated it took a little bit of time but its been worth it. They are very enthusiastic that they got it done and it's behind them. It not only helps them, it helps the applicants on those particular applications in that they only have to jump through one hoop and it takes a shorter amount of time.

Chairman Herrmann said okay, and is there anything else to bring before the Commission? Hearing nothing he declared the meeting adjourned.

Respectfully submitted,

Jim Hull  
Director of Staff